



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 05 नवम्बर, 2020 / 14 कार्तिक, 1942

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 3rd December, 2019

No. Shram(A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

| Sl. No. | Ref. No. | Petitioner | Respondent | Date of Award/ Order |
|---------|----------|----------------|--|-------------------------|
| 1. | 17/17 | Vinod Kumar | Vice Chancellor, HPKVV Palampur. | 01-10-2019 |
| 2. | 20/17 | Kuldeep Kumar | -do- | 01-10-2019 |
| 3. | 872/16 | Kesav | D.F.O. Chamba | 01-10-2019 |
| 4. | 69/14 | Netar Singh | S.E. HPSEBL Dalhousie | 01-10-2019 |
| 5. | 851/16 | Kamla Devi | Er.-in-Chief, HPPWD, Nirman Shimla. | 01-10-2019 |
| 6. | 14/18 | Chain Singh | E.E. HPPWD, Jawali | 01-10-2019 |
| 7. | 10/18 | Khem Raj | -do- | 01-10-2019 |
| 8. | 12/18 | Budhi Singh | -do- | 01-10-2019 |
| 9. | 06/18 | Kewal Singh | -do- | 01-10-2019 |
| 10. | 22/17 | Manjeet Kumar | Vice Chancellor, HPKVV Palampur. | 01-10-2019 |
| 11. | 100/18 | Raj Kumar | M.D. A.T. Hydro Project Upper Tarela. | 05-10-2019 |
| 12. | 97/18 | Kishan Chand | M.D. A.T. Hydro Project Upper Tarela. | 05-10-2019 |
| 13. | 104/18 | Desh Raj | M.D. M/s Cimron Const. Pvt. Ltd. | 05-10-2019 |
| 14. | 217/16 | Ram Kumar | E.E. HPPWD, Killar | 05-10-2019 |
| 15. | 40/18 | Bhuri Singh | E.E. HPPWD, Jawali | 14-10-2019 |
| 16. | 03/17 | Jaywanti | E.E. HPPWD/I&PH, Killar | 14-10-2019 |
| 17. | 05/16 | Lal Dei | E.E. HPPWD/I&PH, Killar | 15-10-2019 |
| 18. | 04/17 | Guhli Devi | E.E. HPPWD/I&PH, Killar | 15-10-2019 |
| 19. | 89/14 | Rajesh Sharma | Employer Swiss Garner Life | 17-10-2019 |
| 20. | 27/17 | Sanam Singh | Vice Chancellor HPKVV Palampur. | 22-10-2019 |
| 21. | 19/17 | Sanjay Kumar | -do- | 22-10-2019 |
| 22. | 147/14 | Desh Raj | -do- | 22-10-2019 |
| 23. | 171/14 | Pardeep Kumar | -do- | 22-10-2019 |
| 24. | 156/14 | Vinod Kumar | -do- | 22-10-2019 |
| 25. | 15/19 | Parvati Devi | Board of Dir. Urban Co-op. Bank Mandi. | 24-10-2019 |
| 26. | 354/16 | Rajinder Singh | S.E.E. HPSEBL, Sarkaghat | 25-10-2019 |
| 27. | 30/17 | Anek Kumar | Vice Chancellor, HPKVV Palampur. | 31-10-2019 |

By order,

NISHA SINGH, IAS,
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 17/2017

Date of Institution : 07.1.2017

Date of Decision

: 01.10.2019

Shri Vinod Kumar s/o Shri Diwan Chand, r/o Village Amtrar, P.O. Lilly, Tehsil Nagrota Bagwan, District Kangra, H.P. . *Petitioner.*

Versus

1. The Vice Chancellor, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Vinod Kumar s/o Shri Diwan Chand, r/o Village Amtrar, P.O. Lilly, Tehsil Nagrota Bagwan, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. during year, 2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employer?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Agro Forestry department *w.e.f.* July, 2003 and he continued to work as such upto the year 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Agro Forestry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Seed Production department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions

were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2003 upto the year 2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference no.207/2010. It was accepted by the President of the union and application No. 25/2010 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-*cum*-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Seed Production department from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. When the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No.FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during December, 2005, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondents are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondents university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondents university at his own will. He had worked as a contractor during the years 2005-2006 and had raised the bills. The head of the department had not violated any of the provisions of the Act. The petitioner was not interested to work as a labourer. The willing workers were engaged by the contractor and not by the respondents. The Director of Research of the university had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal works, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. In between for the period from 2005 to 2006, he had raised bills as a contractor. The HOD concerned used to verify the work done, monthly attendance and wages bill raised by the Contractor concerned to see that excess payments were not made. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 04.7.2018:

1. Whether the verbal termination of the services of the petitioner by the respondents during year, 2010 is/was legal and justified as alleged? . .*OPP*.
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.
4. Whether the petitioner has no cause of action to file present case as alleged? . .*OPR*.
5. Whether the petitioner has no locus standi to file the present case as alleged? . .*OPR*.
6. Whether this court has no jurisdiction to file the present case as alleged? . .*OPR*.
7. Whether the petitioner is/was daily aid paid worker of the respondents as alleged. If so, its effect? . .*OPR*.
8. Whether the petitioner has not approached to this court with clean hands as alleged? . .*OPR*.
9. Whether the petitioner has suppressed true and material facts from the court as alleged? . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Vinod Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondents examined one Shri Dinesh Kumar Vatsa, Director of Research, CSK, HPKV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D1 to Ex. RW1/D9, copy of license/registration dated 29.1.2011 as Ex. RW1/E, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/F, copy of application dated 26.7.2011 as Ex. RW1/G, copy of certificate dated 11.7.2014 as Ex. RW1/H, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/I to Ex. RW1/N, copy of award dated 30.6.2014 as Ex. RW1/O and copy of order dated 20.3.2014 as Ex. RW1/P.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|-------------|-------|
| Issue No. 1 | : Yes |
| Issue No. 1 | : Yes |
| Issue No. 2 | : No |
| Issue No. 3 | : Yes |
| Issue No. 4 | : Yes |

| | |
|-------------|--|
| Issue No. 5 | : Yes |
| Issue No. 6 | : Not pressed |
| Issue No. 7 | : No |
| Issue No. 8 | : Yes |
| Issue No.9 | : Yes |
| Relief | : Petition is dismissed per operative part of the Award. |

REASONS FOR FINDINGS

Issues No. 1, 2 & 7 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Vinod Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-A to Mark-I (now as Ex. RW1/D1 to Ex. RW1/D9). He admitted that in the fields seasonal work is done. He was also categorical that he works in the fields as a beldar. He denied that he is making a phoney statement.

11. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKVV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondents.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2003. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2003 upto the year 2010, the petitioner had worked for 240 days in each

year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

12. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

13. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

14. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

15. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

16. Ex. RW1/D1 to Ex. RW1/D9 are the copies of bills/contingent bills relating to the petitioner and others.

17. Ex. RW1/E is the copy of certificate of registration dated 29.1.2011 relating to M/s. Sahayata Security Services.

18. Ex. RW1/F is the copy of certificate of registration dated 27.7.2011 relating to M/s. Sun Security Service.

19. Ex. RW1/G is the copy of application for registration of establishments employing contract labour pertaining to M/s Sun Security Services.

20. Ex. RW1/H is the copy of certificate of registration dated 11.7.2014 relating to M/s. Nu Vision Commercial & Escort Services.

21. Ex. RW1/I is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

22. Ex. RW1/J is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

23. Ex. RW1/K is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

24. Ex. RW1/L is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

25. Ex. RW1/M is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

26. Ex. RW1/N is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

27. Ex. RW1/O is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

28. Ex. RW1/P is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

29. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

30. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

31. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu. (2004) 3 SCC 514, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

32. In the case on hand, it was asserted by the petitioner that he was a workman of the respondents, being appointed on daily waged basis. The respondents denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. Rather, the respondents in the cross-examination of the petitioner itself have placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex. R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondents. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It is the case of the respondents that the seniority list contains the names of all the daily waged workers working with them. Then, the petitioner himself clearly admitted his signatures to be there on bills/contingent bills, Ex. RW1/D1 to Ex. RW1/D9. These are bills/lists through which payments were made to the petitioner. Furthermore, it was clearly admitted by the petitioner that in the fields seasonal work was being done. He was also categorical that in the department he was working in the fields as a beldar. These admissions on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondents. Rather, it appeared that he used do seasonal work in the department. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/D1 to Ex. RW1/D9, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. It is evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual

system. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2003 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondents.

33. Next, it was claimed by the petitioner that he had worked continuously with the respondents from July, 2003 upto the year 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondents, his name ought to have figured in the seniority list maintained by the respondents. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondents as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondents and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

34. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

35. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

36. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case

titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers , 2008 LLR 509,** wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondents, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

37. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondents. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked as a seasonal worker, he is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are decided against the petitioner, while issue No.7 is answered in the negative.

Issues No. 3 to 5, 8 & 9 :

38. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondents.

Issue No. 6 :

39. Not pressed.

Relief :

40. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2019.

Sd/-
(**YOGESH JASWAL**),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 20/2017
Date of Institution : 07.1.2017
Date of Decision : 01.10.2019

Shri Kuldeep Kumar s/o Shri Dharam Chand, r/o Village and Post Office Arla, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

1. The Vice Chancellor, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Kuldeep Kumar s/o Shri Dharam Chand, r/o Village and Post Office Arla, Tehsil Palampur, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. *w.e.f.* 01.09.2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Fodder department *w.e.f.* 1.1.2008 and he continued to work as such upto 31.8.2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Organic Farm department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P.

Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Fodder department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2008 upto the year 2010. The petitioner was also a member of the union and reference had been made to this court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No.207/2010. It was accepted by the President of the union and application No.25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-*cum*-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Fodder department from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked

for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. His name does not figure in the seniority lists of daily paid workers of the university. It was asserted that as the petitioner had never worked as a daily paid worker during the year 2008 in the Department of Crop Improvement (Fodder Section), the question of issuing appointment letter to him did not arise. The demands of union had not been considered by the respondents on the grounds that the services of the workers had not been engaged as daily paid labourers on muster roll basis. The tender to outsource the services of the workers was flouted by the Department of Soil Science of the university and the tender of M/s Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. The Director of Research had not forced anyone to join/work under the agency. Since, the petitioner had never worked in the Department of Crop Improvement during the year 2008, the HOD concerned had not violated any of the provisions of the Act. The Director of Research of the university had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related to research and scientific purposes. The deployment had been made for seasonal works, as per the requirement of the work. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 04.7.2018:

1. Whether the verbal termination of the services of the petitioner by the respondents *w.e.f.* 01-09-2010 is/was legal and justified as alleged? . . .*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.
4. Whether the petitioner has no cause of action to file present case as alleged? . .*OPR*.
5. Whether the petitioner has no locus standi to file the present case as alleged? . .*OPR*.
6. Whether this court has no jurisdiction to file the present case as alleged? . .*OPR*.
7. Whether the petitioner is/was daily paid worker of the respondents as alleged. If so, its effect? . .*OPR*.
8. Whether the petitioner has not approached this court with clean hands as alleged? . .*OPR*.
9. Whether the petitioner has suppressed true and material facts from the court as alleged? . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kuldeep Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondents examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copy of letter dated 8.7.1998 as Ex. RW1/D, copy of license/registration dated 29.1.2011 as Ex. RW1/E, copies of tentative seniority lists as on 31.3.2006 & 31.3.2008 as Ex. RW1/F & Ex. RW1/G, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/H, copy of application dated 26.7.2011 as Ex. RW1/I, copy of certificate dated 11.7.2014 as Ex. RW1/J, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/K to Ex. RW1/P, copy of Award dated 30.6.2014 as Ex. RW1/Q and copy of order dated 20.3.2014 as Ex. RW1/R.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

| | |
|-------------|-------|
| Issue No. 1 | : Yes |
| Issue No. 2 | : No |
| Issue No. 3 | : Yes |
| Issue No. 4 | : Yes |
| Issue No. 5 | : Yes |

| | |
|-------------|--|
| Issue No. 6 | : Not pressed |
| Issue No. 7 | : No |
| Issue No. 8 | : Yes |
| Issue No. 9 | : Yes |
| Relief | : Petition is dismissed per operative part of the Award. |

REASONS FOR FINDINGS

Issues No. 1, 2 & 7 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Kuldeep Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager or to have worked in any department of the university. Volunteered that, no casual card, attendance record or wages slip etc. were being issued by the department. He also admitted that he had not worked in any of the sanctioned posts of the university. Further, he admitted that he had never been kept by the department on muster roll. He feigned ignorance that the seniority list of only those persons is maintained, who are kept by the department on muster roll. He was also not aware that after the year 1998 no daily wager had ever been engaged. He denied these days he is working with the contractor. He also denied that he is making a phoney statement.

11. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondents.

In the cross-examination, he denied that the petitioner was kept at work in the year 2008. Volunteered that, he had never worked with the respondents and thereafter stated that after the year 2010 the workers had been kept on outsource basis. Earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2008 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

12. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

13. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

14. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

15. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

16. Ex. RW1/D is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

17. Ex. RW1/E is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahayata Security Service.

18. Ex. RW1/F is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

19. Ex. RW1/G is the copy of letter dated 25.5.2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

20. Ex. RW1/H is the copy of certificate of registration relating to M/s. Sun Security Service.

21. Ex. RW1/I is the copy of application for registration of establishments employing contract labour.

22. Ex. RW1/J is the copy of certificate of registration dated 11.7.2014 pertaining to M/s Nu Vision Commercial & Escort Services.

23. Ex. RW1/K is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

24. Ex. RW1/L is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

25. Ex. RW1/M is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

26. Ex. RW1/N is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

27. Ex. RW1/O is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

28. Ex. RW1/P is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

29. Ex. RW1/O is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/P is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

32. In the case on hand, it was asserted by the petitioner that he was a workman of the respondents, being appointed on daily wage basis. The respondents denied this fact and claimed that had he been engaged as a daily paid labourer on muster roll basis, his name ought to have figured in the seniority list of daily paid labourers of the university circulated in the years 2006 and 2008. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. On the contrary, the respondents have placed on record the revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. RW1/F and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex. RW1/G. These documents were not disputed by the petitioner. A perusal of these documents would reveal that the name of the petitioner does not figure in them anywhere. No reason has been assigned by the petitioner as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Be it recorded here, the petitioner in his substantive evidence categorically admitted that he had not been kept on muster roll by the department. Then, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. RW1/D. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. RW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. So, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2008 as a daily paid worker by the respondents. In view of the admission made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondents.

33. Next, it was claimed by the petitioner that he had worked continuously with the respondents from the year 2008 upto the year 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondents, his name ought to have figured in the seniority lists maintained by the respondents. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the

respondents and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

34. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

35. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

36. Reference was also made by the petitioner to the case titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondents, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

37. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster-roll was prepared regarding his work, nor his name figured in the seniority lists of daily paid workers maintained by the respondents. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are decided against the petitioner, while issue No. 7 is answered in the negative.

Issues No. 3 to 5, 8 & 9 :

38. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondents.

Issue No.6 :

39. Not pressed.

Relief :

40. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 872/2016

Date of Institution : 26.11.2016

Date of Decision : 01.10.2019

Shri Kesav s/o Shri Puran Chand through General Secretary, District Committee, AITUC, HQ CHEP Stage-II, Karian, P.O. Hardaspura, Tehsil & District Chamba, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Chamba Forest Division, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Uday Singh, DDA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Kesav s/o Shri Puran Chand through the General Secretary, District Committee, AITUC, HQ CHEP Stage-II, Karian, P.O. Hardaspura, Tehsil & District Chamba, H.P. during December, 2014 by the Divisional Forest Officer, Chamba Forest Division, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as daily waged beldar on muster-roll basis in August, 2013 and had continuously worked with intermittent breaks upto December, 2014 with the respondent. Fictional breaks were given to him from time to time so that 240 days could not be completed in each calendar year. His services were finally terminated in December, 2014 without any rhyme or reason. Workers junior to him were retained and allowed to continuously work. The respondent has violated the principle of ‘last come first go’. The petitioner had been retrenched without giving any notice of retrenchment and compensation in lieu thereof. The names of the juniors, who were retained in service by the respondent are Shri Utmo and twenty eight others. New/fresh hands were also engaged by the respondent throughout the Division. He was not given an opportunity of reemployment. The breaks were to be counted as continuous service for the purpose of calculation of 240 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). From the date of his disengagement, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petitioner were denied on merits. It is denied that the petitioner was engaged on daily waged basis *w.e.f.* August, 2013. It was asserted that he was engaged as a daily waged labourer for seasonal work *w.e.f.* July, 2014 and had worked intermittently upto December, 2014. He had only worked for a total of 64 days and thereafter had left the work of his own sweet will. Neither the services of the petitioner had been terminated nor he was given breaks by the respondent. The petitioner had not completed 240 days in any calendar year. The persons mentioned at serial No. 1 to 29 in the claim petition are not working with the respondent. They had worked with the respondent only in the year 2014. The respondent has not violated the provisions of Sections 25-F, 25-G and 25-H of the Act as well as Article 14 and 16 of the Constitution of India. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. The petitioner is gainfully employed, being an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 12.6.2018:

1. Whether termination of services of the petitioner by the respondent during December, 2014 is/was legal and justified as alleged? . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kesav examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. Shri Sanjeev Sharma (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A and copy of mandays chart as Ex.RW1/B.

7. Arguments of the learned authorized representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : negative

Issue No. 3 : Yes

Relief : Petition is dismissed as per the operative part of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Kesav (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of petition/statement of claim in its entirety.

11. In the cross-examination, he denied that there is seasonal work in the department. Volunteered that, the work goes on for the whole year. He denied that he was engaged by the department in July, 2014. He also denied that he had not worked continuously. He further denied that he had worked on muster roll and bill basis intermittently till December, 2014. Self stated that he had worked from August, 2013 upto December, 2014. He specifically denied that he had not worked in the department from August, 2013 upto June, 2014. He also denied that he had left the work of his own. However, he admitted that a correct mandays of his work has been given by the department. He denied that no fictional breaks had ever been given to him by the department. He admitted that he had not worked with the department for 240 days in any

year. He owns land, which he cultivates. He clearly denied that no juniors to him had been retained by the department. It was also denied by him that only those workers had been regularized by the department, who as per the policy of the Government had worked for 240 days or more. He denied that he is making a phoney statement.

12. Conversely, Shri Sanjeev Sharma, Divisional Forest Officer, Chamba, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he admitted that muster-rolls are issued by the DFO. He denied that the petitioner had been removed from work in July, 2014. Volunteered that, he himself had left the job. He admitted that when the petitioner had not come to work after the year 2014, no notice was issued to him. He also admitted that as per the record no retrenchment compensation has been paid to the petitioner. Self stated that he himself left the job. He admitted that seniority list of daily wagers is prepared at the Divisional level. He also admitted that the principle of 'last come first go' is followed. He specifically denied that no opportunity of being heard was afforded to the petitioner. He also denied that the petitioner was not allowed to work for 240 days in any year. He feigned ignorance that S/Sh./Smt. Kailash, Singhu, Bias Dev, Paras Ram, Veer Chand, Musarbo Devi, Moti Ram, Surinder Kumar and Karam Chand even today are working with the department. Self stated that he can tell only after seeing the record. He admitted that S/Sh. Kailash Chand, Singhu, Bias Dev and Paras have been regularized by the department.

14. Ex.RW1/B is the copy of mandays chart of the petitioner.

15. It is an admitted fact of the parties that the services of the petitioner were engaged as a daily waged labourer. Although, the petitioner claimed that he was engaged as a labourer in August, 2013 but, however, the respondent has produced on record his mandays chart, copy of which is Ex.RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of July, 2014 for the first time as a daily waged labourer and he had worked as such upto December, 2014. Faced with the situation, it was contended for the petitioner that the respondent in his cross-examination has admitted that the petitioner had been engaged in the month of August, 2013. True it is that Shri Sanjeev Sharma (RW1) admitted that the petitioner was engaged in the department in August, 2013 but, however, when the cross-examination of the petitioner is seen, he specifically admitted that a correct mandays of his working details has been given by the department. Meaning thereby that the mandays Ex.RW1/B produced by the respondent is not in dispute.

The claimant/petitioner has not placed and exhibited on record any document to show that he had been engaged as a daily waged labourer by the respondent in August, 2013.

16. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after December, 2014, the petitioner had left the work of his own.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Sanjeev Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary

proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

18. Then, it was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that as no one month's notice in writing had been given to him by the department, nor he had been paid the retrenchment compensation, the purported order of retrenchment is illegal, because the conditions precedent as contained in Section 25-F of the Act were not complied with.

19. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106.** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

20. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Although, in his chief- examination the petitioner claimed that he had worked with the respondent as a labourer from August, 2013 upto December, 2014, but no mandays chart of his is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the reference and also as per the statement of claim the services of the petitioner were allegedly terminated in December, 2014. Looking to the mandays chart Ex.RW1/B, it is evident that in a block of twelve calendar months anterior to the aforesaid date of his alleged termination, the petitioner had not worked continuously for a period of 240 days. Since July, 2014 upto December, 2014, the petitioner had only worked for 64 days. The petitioner in his substantive evidence also clearly admitted that he had not worked with the department for 240 days in any year. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

21. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 4 of the statement of claim. The respondent had refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondent at

the time of the termination of his services. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case. Then, it is evident from the statement of claim that the year of initial engagement of all the persons mentioned in para 4 is shown as 2014. As per my findings above, the services of the petitioner were initially engaged in the month of July, 2014 by the respondent. So all such persons cannot be said to be junior to the petitioner. Therefore, it cannot be said that the respondent had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

22. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

23. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

24. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue and that the instant claim petition is not maintainable in the present form.

25. This issue is decided against the petitioner and in favour of the respondent.

Relief:

26. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 69/2014

Date of Institution : 22.2.2014

Date of Decision

: 01.10.2019

Shri Netar Singh s/o Shri Shayam Lal, r/o Village and Post Office Karyuni, Tehsil Pangi, District Chamba, H.P. . . . *Petitioner.*

Versus

Superintending Engineer, Operation Circle, H.P.S.E.B. Limited, Dalhousie, District Chamba, H.P. . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Madan Rawat, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Netar Singh s/o Shri Shayam Lal, r/o Village and P.O. Karyuni, Tehsil Pangi, District Chamba, H.P. by the Superintending Engineer, Operation Circle, H.P.S.E.B. Limited, Dalhousie, District Chamba, H.P. *w.e.f.* 21.02.1996 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits seniority and amount of compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as daily waged T-Mate in the year 1994 in HPSEB Limited Electrical Division Pang Valley, Killar. He had worked with intermittent breaks upto February, 1996 with the respondent/department. Fictional breaks were given to him from time to time so that 160 days could not be completed in each calendar year. Persons junior to the petitioner were retained continuously on muster roll basis. While terminating the services of the petitioner, no one month's notice in writing and retrenchment compensation had been paid to him. The respondent has not resorted to the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. The breaks are to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Act. At the time of his termination, persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Karam Singh, Beer Singh, Mohinder Singh, Satish Kumar, Siri Ram, Hari Nath, Chain Singh, Bhag Singh, Hari Singh, Gian Chand, Yog Singh, Prem Singh, Roshan Lal Khem Raj and Dharma Singh. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage him, but in vain. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, limitation, cause of action, estoppel, locus standi and that the petitioner had not approached the Court with clean hands. The contents of the petition were denied on merits. It was asserted that the petitioner was deployed as a daily rated worker/beldar *w.e.f.* 1.12.1994. He was not a T-Mate. He had worked intermittently upto 20.2.1996. He had thereafter had left the work of his own accord. His engagement was for specific work and which came to an end on the completion of the same. The petitioner had not completed 160 days of service in any calendar year. He had not fulfilled the conditions as provided under Section 25-B of the Act. It was admitted that a demand notice was served upon the respondent and it was responded to. The services of the petitioner were never terminated by the respondent. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 23.5.2018:

1. Whether termination of the services of the petitioner by the respondent *w.e.f.* 21-02-1996 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*
5. Whether the petitioner has locus standi to file the present case as alleged? . . .*OPR.*
6. Whether the petitioner has not come to the Court with clean hands as alleged? . . .*OPR.*
7. Whether the petitioner has concealed the material facts from Court as alleged? . . .*OPR.*
8. Whether the petitioner is estopped from filing present case as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Netar Singh examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of judgment as Ex. PW1/B, copy of seniority list as Ex. PW1/C, copy of RTI application as Ex. PW1/D, copy of mandays chart as Ex. PW1/E, copy of RTI application as Ex. PW1/F, copies of muster rolls as Ex. PW1/G to Ex. PW1/Q and Ex. PW1/S and copy of RTI application as Ex. PW1/R. Shri Rumel Singh (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

| | |
|-------------|---|
| Issue No. 1 | : Decided accordingly. |
| Issue No. 2 | : Re-engagement with seniority and continuity in service from 21.2.1996, except back wages. |
| Issue No. 3 | : No |
| Issue No. 4 | : No |
| Issue No. 5 | : No |
| Issue No. 6 | : No |
| Issue No. 7 | : No |
| Issue No. 8 | : No |
| Relief | : Petition is partly allowed as per the operative part of the Award. |

REASONS FOR FINDINGS

Issue No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Netar Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

11. In the cross-examination, he admitted that he had worked with the respondent from May, 1994. He had worked as a T-Mate in the department. He denied that he was engaged as a beldar by the department. He admitted that he had worked with the respondent upto February, 1996. He denied that he had left the work. He further denied that he was engaged as a casual labourer by the department. He specifically denied that he had not completed 160 days of work. He also denied that all the workers shown by him in the list had worked continuously and that he himself had abandoned the work in the year 1996. He denied that he is making a phoney statement.

12. Ex.PW1/B is the copy of judgment dated 3.8.2011 passed in CWP (T) No.10004 of 2008 by the Hon'ble High Court of Himachal Pradesh.

13. Ex.PW1/C is a copy of names of persons who were retained in the office of Sr. Executive Engineer, Pangi Valley Electrical Division, HPSEB, Ltd. Killar after the year 1996.

14. Ex.PW1/D is a copy of letter dated 8.6.2012 regarding information under the RTI Act.

15. Ex.PW1/E is a copy of detail of working days and wages paid to the petitioner from December, 1994 upto January, 1996.

16. Ex.PW1/F is a copy of letter dated 8.6.2012 regarding information under RTI Act.

17. Ex.PW1/G to Ex.PW1/Q & Ex.PW1/S are copies of muster rolls relating to the petitioner and others.

18. Ex. PW1/R is a copy of letter dated 8.6.2012 regarding information under the RTI Act.

19. Conversely, Shri Rumel Singh, Superintending Engineer, HPSEBL, Dalhousie, District Chamba, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

20. In the cross-examination, he admitted that the petitioner had worked as a daily waged T-Mate from December, 1994 upto February, 1996. Volunteered that, he had left the job of his own. He denied that the department had removed the petitioner from service without any notice or compensation. He admitted that the department had not issued any notice to the petitioner regarding his leaving the job. He denied that after the disengagement of the petitioner, junior T-Mates were kept at work by the department. He admitted that after the year 1996, the department had engaged T-Mates and who nowadays have been regularized.

21. It is an admitted case of the parties that the services of the petitioner were engaged by the respondent. It was claimed by the petitioner that his services had been engaged as a daily waged T-mate and that he had worked as such from the year 1994 upto February, 1996. Although, it is an admitted fact on the part of the respondent that the petitioner had worked in the department from December, 1994 upto 21st February, 1996, but it was claimed that he had worked as a daily rated worker/beldar. However, Shri Rumel Singh (respondent) as RW1 in his substantive evidence categorically admitted that the petitioner had worked with the department as a daily waged T-mate. Placed on record by the petitioner is a copy of detail of his working days and wages paid to him by the department as Ex.PW1/E. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of December, 1994 for the first time and that he had worked as such upto January, 1996.

22. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

23. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875 that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rumel Singh, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such

'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

24. It was contended by the learned counsel for the respondent that the petitioner had not worked for 160 days or more in a year preceding twelve calendar months from the date of his alleged termination, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

25. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106.** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

26. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place 21.2.1996. Copy of detail of working days of the petitioner is there on the file as Ex.PW1/E to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination. This document, which is not in dispute by the respondent, reveals that from May, 1995 upto January, 1996, the petitioner had worked for a total of 204 days. Meaning thereby that the petitioner had completed 160 days of work in a block of twelve calendar months preceding the date of his termination i.e. 21.2.1996 (as per the reference).

27. Section 25-F of the Act postulates as under:—

"25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:*
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."*

28. There is not an iota of evidence on record to show that one month's notice in writing indicating the reasons for retrenchment of the petitioner/workman had been given and that he

had been paid the compensation at the time of his retrenchment, as envisaged under Section 25-F of the Act. RW1 Shri Rumel Singh nowhere stated in his substantive evidence that any notice of retrenchment had been given to the petitioner. It is also not his evidence that any retrenchment compensation had been paid to the petitioner. For these reasons, the final termination of the services of the petitioner by the respondent *w.e.f.* 21.2.1996 is patently wrong and incorrect.

29. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

30. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 7 of the statement of claim. The respondent has refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, no seniority list has been placed and exhibited on record nor any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondent at the time of the termination of his services. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case. Therefore, it cannot be said that the respondent had violated the principle of ‘last come first go’, as envisaged in Section 25-G of the Act.

31. Shri Rumel Singh (RW1) in his cross-examination categorically admitted that after the year 1996 many T-mates were kept by the department and who nowadays have been regularized. It, thus, shows that after the services of the petitioner were disengaged, new/fresh hands were employed. There is nothing on the file to show that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner. Such being the situation, it can safely be held that the respondent has contravened the provisions of Section 25-H of the Act.

32. While testifying in the Court as PW1, the petitioner has given his age as 52 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

33. These issues are decided accordingly.

Issues Nos. 3 to 5 :

34. In view of the findings on issues No. 1 and 2 above, it is crystal clear that the petitioner does have the locus standi as well as cause of action to file and maintain the present statement of claim/petition. Moreover, these issues were not pressed for by the learned counsel appearing for the respondent at the time of arguments. Hence, these issues are answered in the negative and are decided against the respondent.

Issues Nos. 6 and 7 :

35. It has not been shown by the respondent as to how the petitioner has not approached this Court with clean hands and what material facts have been concealed by him. Otherwise also, from the pleadings, it cannot be said that there has been any concealment of facts on the part of the petitioner and that he had not approached the Court with clean hands. Hence, these issues are also answered in the negative and are decided against the respondent.

Issue No. 8 :

36. No evidence of estoppel has been led by the respondent. Hence, this issue is also answered in the negative and is decided against the respondent.

Relief :

37. In the light of what has been discussed hereinabove, the present reference/claim petition succeeds in part and the same is allowed partly. The retrenchment of the petitioner is set aside and quashed. The respondent is hereby directed to re-engage the petitioner forthwith. He shall be entitled to seniority and continuity in service from the date of his illegal termination *i.e.* 21.2.1996, *except back wages*. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 851/2016

Date of Institution : 26.11.2016

Date of Decision : 01.10.2019

Smt. Kamla Devi w/o Shri Kashmir Singh, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. . . . *Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD Nirman Bhawan, Shimla-1
2. The Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. . . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondents : Smt. Navina Rahi, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Smt. Kamla Devi w/o Shri Kashmir Singh, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 01/10/1999 (i) the Engineer-in-Chief HPPWD Nirman Bhawan Shimla-1 (ii) the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute *vide* demand notice dated nil received in the Labour Office Mandi on 26-06-2015 after more than 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period *w.e.f.* 02/12/1998 and 30/09/1999 and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the Assistant Engineer, Sub Division Mandap *vide* muster rolls No. 15, 69, 187, 291, 491, 607, 732, 920 and vouchers No. 11/7, 15/4, 36/54, 1/5013/18, 6/39, 15/40 and 24/30 in the month and year of 1998 to 1999 respectively. The petitioner had completed 208 days by discharging her duty faithfully, sincerely and diligently, but her service had been dispensed with without any cause and reasons. No notice in writing under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been given to her. The respondents had terminated the services of the petitioner on 30.9.1999 without serving any notice and without complying with the mandatory provisions of the Act. After the termination of her services, junior to her were retained, who are still serving the respondent. The respondents had violated the provisions of Section 25-G of the Act. She was not gainfully employed. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondents appeared. Respondent No. 2 only filed the reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar on muster roll basis and had worked *w.e.f.* 1/1999 upto 9/1999 and had worked for 179 days and thereafter she had left the job of her own sweet will. She had not completed 240 days and the question of complying with the provisions of Section 25-F of the Act did not arise. As the petitioner had left the job of her own, so the question of adhering to the principle of ‘last come first go’ also did not arise. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 19.9.2018:

1. Whether termination of the services of the petitioner by the respondents *w.e.f.* 01.10.1999 is/was legal and justified as alleged? . . . *OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPP.*
4. Whether the claim petition suffers from delay and laches as alleged? . . . *OPP.*

Relief.

6. Arguments of the learned Deputy District Attorney for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|-------------|---|
| Issue No. 1 | : Yes |
| Issue No. 2 | : Negative |
| Issue No. 3 | : Not pressed |
| Issue No. 4 | : No |
| Relief | : Petition is dismissed as per the operative part of the Award. |

REASONS FOR FINDINGS

Issue No.1 and 2 :

8. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

9. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent during October, 1999 by violating the provisions of Sections 25-F & 25-G of the Act. It was asserted that the petitioner had been engaged on daily waged basis on muster roll as a labourer in the year 1998. It was also her claim that she had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

10. However, when the case was listed for adducing evidence by the petitioner for 27.9.2019, neither the petitioner nor her counsel had put in appearance before this Tribunal,

despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

11. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

12. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

13. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

14. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

15. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, she is unwilling to adduce evidence or argue her case.

16. In the instant case, neither the petitioner nor her counsel had put in appearance before this Tribunal on 27.9.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

17. Since, it is not disputed by the respondents that the services of the petitioner had been engaged on daily waged basis, so it was only required of the petitioner to establish on record, as per the reference, that the termination of her services in the year 1999 by the respondents was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but her allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by her. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3 :

18. Not pressed.

Issue No. 4 :

19. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

Relief :

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 14/2018

Date of Institution : 28.3.2018

Date of Decision : 01.10.2019

Shri Chain Singh s/o Shri Rattan Singh, r/o Village and Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. . *Respondent..*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.

For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Chain Singh s/o Shri Rattan Singh, r/o Village and Post Office Sulyali, Tehsil Nurpur, District Kangra, H.P. during July, 1990 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years vide demand notice dated 23.07.2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a beldar on daily waged basis in May, 1986 in HPPWD Division Jassur (Nurpur), H.P. (now HPPWD Jawali) on various construction sites, like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari etc. However, his services were disengaged *w.e.f.* June, 1990 in violation of the law. The petitioner had completed 240 days in each calendar year. The respondent under a mistaken notion and ignorance of law had terminated the services of the petitioner in June, 1990. He thereafter had made oral requests to the respondent and his subordinates to re-engage him. Although, he was assured to be re-engaged after three or four months, but nothing was heard thereafter from the department. A letter in writing had also been sent by him to the department for his re-engagement on daily waged basis, but without success. Smt. Kusum Lata, junior to him was retained by the department and she at present is working in HPPWD Division Nurpur. Twenty four other juniors were also re-appointed by the department in the year 2010, as per the directions of the Hon'ble High Court. The principle of 'last come first go' was not adhered to by the respondent. No one month's notice, nor any retrenchment compensation had been paid to the petitioner. The provisions of Sections 25-F and

25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been violated by the respondent. New/fresh hands had also been engaged and no opportunity was ever given to the petitioner for his re- engagement, thereby, violated the provisions of Section 25-H of the Act. The petitioner is not gainfully employed since the time of his illegal and unjustified termination by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It was specifically denied that the petitioner had been disengaged in June, 1990. It was asserted that he had worked intermittently *w.e.f.* February, 1987 to July, 1990 and thereafter had left the job of his own sweet will. It is denied that the petitioner had completed 240 days in each calendar year. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is admitted that HPPWD Division Jawali is involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Neither any junior had been retained nor engaged by the respondent, so there was no violation of any of the provisions of the Act. It is denied that a pick and choose policy had been adopted by the respondent. The persons mentioned at serial No. 1 to 24 were engaged as per the directions of the Court. After leaving the work the petitioner had never approached the respondent and had raised the demand notice only in the year 2011. Only those workers had been regularized who had worked continuously and fulfilled the requisite criteria of regularization as per the Government policy. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 02.11.2018:

1. Whether termination of the service of petitioner by the respondent during July, 1990 is/was legal and justified as alleged? ..OPP.
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
4. Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Chain Singh examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. Shri Jagtar Singh Thakur (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A. He also placed on the file copy of mandays chart of the petitioner as Ex.RW1/B, copy of notification dated 21.7.1994 as Ex.RW1/C and copy of letter dated 18.8.1994 as Ex.RW1/D.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Decided accordingly

Issue No. 2 : Lump sum compensation of ₹1,00,000/-

Issue No. 3 : No

Issue No. 4 : Negative

Relief. : Petition is partly allowed awarding lump sum compensation of ₹1,00,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issue No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Chain Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He also admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He denied that he had never worked in Jawali Division. He also denied that he had worked intermittently *w.e.f.* February, 1987 upto July, 1990 in the department. He further denied that he had left the work of his own. Volunteered that, from May, 1986 upto June, 1990 he had worked continuously. He specifically denied that he had never worked in the department continuously, nor he had ever been given breaks by the department. He feigned ignorance that the workers mentioned in the petition and the affidavit were kept at work in HPPWD Division Nurpur as per the orders of the Court. He specifically denied that the respondent had adhered to the principle of 'last come first go'. He also denied that he had never worked for 240 days and above in any year. He further denied that only those workers had been regularized who had fulfilled the conditions of the policy of the Government for regularization. He admitted that he owns land, which he cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available. He denied that he is making a phoney statement.

12. Conversely, Shri Jagtar Singh Thakur, Executive Engineer, HPPWD, Division Jawali (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he denied that the petitioner had worked from May, 1986 till June, 1990 regularly and had completed 240 days. Volunteered that, as per their record, the

petitioner had only worked for 706 days. He denied that the petitioner had been removed without any notice and that junior beldars/workers were retained. He admitted that no notice had been given to the petitioner to report for work. Self stated that he had left the job of his own. He further admitted that Ex.RW1/D contains the names of only those persons, who have been working in the department since the year 1994. He denied that the petitioner had been given the assurance by the department that as and when the work would be available, he would be called. Further, he denied that intentionally incomplete muster rolls and other record pertaining to the petitioner had been filed.

14. Ex.RW1/B is the copy of the mandays chart relating to the petitioner.

15. Ex. RW1/C is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

16. Ex. RW1/D is the copy of Office Order dated 18.8.1994 regarding the transfer of work-charged staff to HPPWD Division Nurpur, on the closure of HPPWD Jassur and its opening at Jawali.

17. It is an admitted fact of the parties that the services of the petitioner were engaged as a daily waged beldar. Although, the petitioner claimed that he had worked as a beldar from May, 1986 upto June, 1990 but, however, the respondent has produced on record the mandays chart of the petitioner, copy of which is Ex.RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of February, 1987 for the first time as a daily waged beldar and he had worked as such upto July, 1990. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondent from May, 1986 upto June, 1990.

18. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after July, 1990 the petitioner had left the work of his own.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Jagtar Singh Thakur, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the affirmative in view of the material on record.

21. It was specifically claimed by the petitioner that he had worked for 240 days in each calendar. So was stated by the petitioner in his chief-examination, being in the shape of affidavit Ex.PW1/A. Although, it was suggested to him in his cross-examination that he had not worked for 240 days or more in any year, but he denied the same. It is by now well settled that a denied suggestion does not amount to proof. More so, in view of the mandays chart Ex.RW1/B, the correctness of which is not disputed by the respondent. The said document is indicative of the fact that the petitioner had worked for 254 days from August, 1989 upto July, 1990 in the department. As per the reference, the services of the petitioner are alleged to have been illegally terminated during July, 1990. Section 25-F of the Act, which is alleged to have been violated by the respondent, reads thus:

“25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:*
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”*

22. In view of the aforesaid provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of the notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice. The expression “continuous service” has been defined in Section 25-B of the Act. It reads thus:

“25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(ii) *two hundred and forty days, in any other case....*”

23. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months anterior to the date of his retrenchment, his services could not have been terminated unless he was served with one month's notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. In the case on hand, there is not an iota of evidence on record to show that one month's notice in writing indicating the reasons for retrenchment of the petitioner/workman had been given and that he had been paid the compensation at the time of his retrenchment. RW1 Shri Jagtar Singh Thakur nowhere stated in his substantive evidence that any notice of retrenchment had been given to the petitioner. It is also not his evidence that any retrenchment compensation had been paid to the petitioner. For these reasons, the final termination of the services of the petitioner by the respondent *w.e.f.* July, 1990 is patently wrong and incorrect.

24. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

25. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 8 of the statement of claim. The respondent has refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, no seniority list has been placed and exhibited on record nor any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondent at the time of the termination of his services. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case. Therefore, it cannot be said that the respondent had violated the principle of ‘last come first go’, as envisaged in Section 25-G of the Act.

26. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

27. While testifying in the Court as PW1, the petitioner has given his age as 55 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is an agriculturist and earns his livelihood by doing agricultural chores. It is also evident from his cross-examination that he is having landed property. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

28. The learned Assistant District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

29. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

30. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wage or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wage has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 706 days as a non-skilled worker and had completed 240 days during the period of twelve calendar months preceding the date/month of his retrenchment. His services, as per the reference were disengaged in July, 1990 and had raised the industrial dispute by issuance of demand notice after about **twenty one years** i.e. demand notice was given on 23.7.2011. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble

Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

31. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No. 4 is answered in the negative and decided against the respondent.

Issue No. 3 :

32. Not pressed.

Relief :

33. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

| | |
|---------------------|--------------|
| Ref. No. | : 10/2018 |
| Date of Institution | : 28.3.2018 |
| Date of Decision | : 01.10.2019 |

Shri Khem Raj s/o Shri Nant Ram, r/o VPO Sulyali, Tehsil Nurpur, District Kangra, H.P.
..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.

For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Khem Raj s/o Shri Nant Ram, r/o V.P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. during August, 1986 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after nearly 25 years vide demand notice dated 23.07.2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of nearly 25 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a beldar on daily waged basis in May, 1985 in HPPWD Division Jassur (Nurpur), H.P. (now HPPWD Jawali) on various construction sites, like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari etc. However, his services were disengaged *w.e.f.* June, 1990 in violation of the law. The petitioner had completed 240 days in each calendar year. The respondent under a mistaken notion and ignorance of law had terminated the services of the petitioner in June, 1990. He thereafter had made oral requests to the respondent and his subordinates to re-engage him. Although, he was assured to be re-engaged after three or four months, but nothing was heard thereafter from the department. A letter in writing had also been sent by him to the department for his re-engagement on daily waged basis, but without success. Smt. Kusum Lata, junior to him was retained by the department and she at present is working in HPPWD Division Nurpur. Twenty four other juniors were also re-appointed by the department in the year 2010, as per the directions of the Hon'ble High Court. The principle of 'last come first go' was not adhered to by the respondent. No one month's notice, nor any retrenchment compensation had been paid to the petitioner. The provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been violated by the respondent. New/fresh hands had also been engaged and no opportunity was ever given to the petitioner for his re-engagement, thereby, violated the provisions of Section 25-H of the Act. The petitioner is not gainfully employed since the time of his illegal and unjustified termination by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was admitted by the respondent that the petitioner had been engaged as a daily wager in the year 1985. It was specifically denied that he had been disengaged in June, 1990. It was asserted that the petitioner worked intermittently *w.e.f.* January, 1986 to July, 1986 and thereafter had left the job of his own sweet will. It is denied that the petitioner had completed 240 days in each calendar year. It is claimed that HPPWD

Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is admitted that HPPWD Division Jawali is involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Neither any junior had been retained nor engaged by the respondent, so there was no violation of any of the provisions of the Act. It is denied that a pick and choose policy had been adopted by the respondent. The persons mentioned at serial No. 1 to 24 were engaged as per the directions of the Court. After leaving the work the petitioner had never approached the respondent and had raised the demand notice only in the year 2011. Only those workers had been regularized who had worked continuously and fulfilled the requisite criteria of regularization as per the Government policy. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 02.11.2018:

1. Whether termination of the service of petitioner by the respondent during August, 1986 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Khem Raj examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. Shri Jagtar Singh Thakur (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A. He also placed on the file copy of mandays chart of the petitioner as Ex. RW1/B, copy of notification dated 21.7.1994 as Ex. RW1/C and copy of letter dated 18.8.1994 as Ex. RW1/D.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|-------------|------------|
| Issue No. 1 | : Yes |
| Issue No. 2 | : Negative |
| Issue No. 3 | : Yes |
| Issue No. 4 | : No |

Relief

: Claim petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS*Issue No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Khem Raj examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He also admitted that HPPWD Division Jawali was established on 21st July, 1994 vide government notification No.PBW-(A)-A(1)17/94. He denied that he had never worked in Jawali Division. He also denied that he had worked intermittently *w.e.f.* January, 1986 upto July, 1986 in the department. He further denied that he had left the work of his own. Volunteered that, from May, 1986 upto June, 1990 he had worked continuously. He specifically denied that he had never worked in the department continuously, nor he had ever been given breaks by the department. He feigned ignorance that the workers mentioned in the petition and the affidavit were kept at work in HPPWD Division Nurpur as per the orders of the Court. He specifically denied that the respondent had adhered to the principle of 'last come first go'. He also denied that he had never worked for 240 days and above in any year. He further denied that only those workers had been regularized who had fulfilled the conditions of the policy of the Government for regularization. He admitted that he owns land, which he cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available. He denied that he is making a phoney statement.

12. Conversely, Shri Jagtar Singh Thakur, Executive Engineer, HPPWD, Division Jawali (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he denied that the petitioner had worked from May, 1985 till June, 1990 regularly and had completed 240 days. Volunteered that, as per their record, the petitioner had only worked for 165 days. He denied that the petitioner had been removed without any notice and that junior beldars/workers were retained. He admitted that no notice had been given to the petitioner to report for work. Self stated that he had left the job of his own. He further admitted that Ex.RW1/D contains the names of only those persons, who have been working in the department since the year 1994. Further, he denied that the petitioner had been given the assurance by the department that as and when the work would be available, he would be called. Further, he denied that intentionally incomplete muster rolls and other record pertaining to the petitioner had been filed.

14. Ex.RW1/B is the copy of the mandays chart relating to the petitioner.

15. Ex. RW1/C is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

16. Ex. RW1/D is the copy of Office Order dated 18.8.1994 regarding the transfer of work-charged staff to HPPWD Division Nurpur, on the closure of HPPWD Jassur and its opening at Jawali.

17. It is an admitted fact of the parties that the services of the petitioner were engaged as a daily waged beldar. Although, the petitioner claimed that he had worked as a beldar from May, 1985 upto June, 1990 but, however, the respondent has produced on record the mandays chart of the petitioner, copy of which is Ex.RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of January, 1986 for the first time as a daily waged beldar and he had worked as such upto July, 1986. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondent from May, 1985 upto June, 1990.

18. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after July, 1986 the petitioner had left the work of his own.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Jagtar Singh Thakur, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during August, 1986. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in June, 1990. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondent in the month of June, 1990. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Since, it has not been pleaded nor stated by the petitioner that his services stood terminated by the respondent in August, 1986, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

21. Even otherwise, Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the

preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

22. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Although, in his chief-examination the petitioner claimed that he had worked with the respondent as a beldar continuously from May, 1986 upto June, 1990, but no mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 8 of the statement of claim. The respondent had refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondent at the time of the termination of his services. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case. Therefore, it cannot be said that the respondent had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

24. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

25. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3 :

26. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue and that the instant claim petition is not maintainable in the present form.

27. This issue is decided against the petitioner and in favour of the respondent.

Issue No. 4 :

28. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

29. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

30. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

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| Ref. No. | : 12/2018 |
| Date of Institution | : 28.3.2018 |
| Date of Decision | : 01.10.2019 |

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| Shri Budhi Singh s/o Shri Saran Dass, r/o V.P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. | . . .Petitioner. |
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Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

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|--------------------|-----------------------------|
| For the Petitioner | : Sh. Pankaj Bhardwaj, Adv. |
| For the Respondent | : Sh. B.C. Katoch, A.D.A. |

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Budhi Singh s/o Shri Saran Dass, r/o V.P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. during June, 1990 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after nearly 21 years vide demand notice dated 23.07.2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view the delay of nearly 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a beldar on daily waged basis in May, 1986 in HPPWD Division Jassur (Nurpur), H.P. (now HPPWD Jawali) on various construction sites, like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari etc. However, his services were disengaged *w.e.f.* June, 1990 in violation of the law. The petitioner had completed 240 days in each calendar year. The respondent under a mistaken notion and ignorance of law had terminated the services of the petitioner in June, 1990. He thereafter had made oral requests to the respondent and his subordinates to re-engage him. Although, he was assured to be re-engaged after three or four months, but nothing was heard thereafter from the department. A letter in writing had also been sent by him to the department for his re-engagement on daily waged basis, but without success. Smt. Kusum Lata, junior to him was retained by the department and she at present is working in HPPWD Division Nurpur. Twenty four other juniors were also re-appointed by the department in the year 2010, as per the directions of the Hon'ble High Court. The principle of 'last come first go' was not adhered to by the respondent. No one month's notice, nor any retrenchment compensation had been paid to the petitioner. The provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been violated by the respondent. New/fresh hands had also been engaged and no opportunity was ever given to the petitioner for his re- engagement, thereby, violated the provisions of Section 25-H of the Act. The petitioner is not gainfully employed since the time of his illegal and unjustified termination by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was admitted by the respondent that the petitioner had been engaged as a daily wager in the year 1986. It was specifically denied that he had been disengaged in June, 1990. It was asserted that the petitioner worked intermittently *w.e.f.* December, 1986 to May, 1990 and thereafter had left the job of his own sweet will. It is denied that the petitioner had completed 240 days in each calendar year. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is admitted that HPPWD Division Jawali is involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Neither any junior had been retained nor engaged by the respondent, so there was no violation of any of the provisions of the Act. It is denied that a pick and choose policy had been adopted by the respondent. The persons mentioned at serial No. 1 to 24 were engaged as per the directions of the Court. After leaving the work the petitioner had never approached the respondent and had raised the demand notice only in the

year 2011. Only those workers had been regularized who had worked continuously and fulfilled the requisite criteria of regularization as per the Government policy. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 02.11.2018:

1. Whether termination of the service of petitioner by the respondent during June, 1990 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Budhi Singh examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. Shri Jagtar Singh Thakur (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A. He also placed on the file copy of mandays chart of the petitioner as Ex. RW1/B, copy of notification dated 21.7.1994 as Ex. RW1/C and copy of letter dated 18.8.1994 as Ex. RW1/D.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|-------------|---|
| Issue No. 1 | : Yes |
| Issue No. 2 | : Negative |
| Issue No. 3 | : Yes |
| Issue No. 4 | : No |
| Relief | : Claim petition dismissed as per the operative portion of the Award. |

REASONS FOR FINDINGS

Issue No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Budhi Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He also admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He denied that he had never worked in Jawali Division. He also denied that he had worked intermittently w.e.f. December, 1986 upto May, 1990 in the department. He further denied that he had left the work of his own. Volunteered that, from May, 1986 upto June, 1990 he had worked continuously. He specifically denied that he had never worked in the department continuously, nor he had ever been given breaks by the department. He feigned ignorance that the workers mentioned in the petition and the affidavit were kept at work in HPPWD Division Nurpur as per the orders of the Court. He specifically denied that the respondent had adhered to the principle of 'last come first go'. He also denied that he had never worked for 240 days and above in any year. He further denied that only those workers had been regularized who had fulfilled the conditions of the policy of the Government for regularization. He admitted that he owns land, which he cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available. He denied that he is making a phoney statement.

12. Conversely, Shri Jagtar Singh Thakur, Executive Engineer, HPPWD, Division Jawali (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he denied that the petitioner had worked from May, 1986 till June, 1990 regularly and had completed 240 days. Volunteered that, as per their record, the petitioner had only worked for 711 days. He denied that the petitioner had been removed without any notice and that junior beldars/workers were retained. He admitted that no notice had been given to the petitioner to report for work. Self stated that he had left the job of his own. He further admitted that Ex.RW1/D contains the names of only those persons, who have been working in the department since the year 1994. Further, he denied that the petitioner had been given the assurance by the department that as and when the work would be available, he would be called. Further, he denied that intentionally incomplete muster rolls and other record pertaining to the petitioner had been filed.

14. Ex.RW1/B is the copy of the mandays chart relating to the petitioner.

15. Ex. RW1/C is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali alongwith sanctioned strength and staff.

16. Ex. RW1/D is the copy of Office Order dated 18.8.1994 regarding the transfer of work-charged staff to HPPWD Division Nurpur, on the closure of HPPWD Jassur and its opening at Jawali.

17. It is an admitted fact of the parties that the services of the petitioner were engaged as a daily waged beldar. Although, the petitioner claimed that he had worked as a beldar from May, 1986 until June, 1990 but, however, the respondent has produced on record the mandays chart of the petitioner, copy of which is Ex.RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of December, 1986 for the first time as a daily waged beldar and he had worked as such upto May, 1990. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondent from May, 1986 upto June, 1990.

18. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after May, 1990 the petitioner had left the work of his own.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Jagtar Singh Thakur, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. Then, it was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

21. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106.** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

22. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Although, in his chief-examination the petitioner claimed that he had worked with the respondent as a beldar continuously from May, 1986 upto June, 1990, but no mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the reference and also as per the statement of claim the services of the petitioner were allegedly terminated in June, 1990. Looking to the mandays chart Ex.RW1/B, it is evident that in a block of twelve calendar months anterior to the aforesaid date of his alleged termination, the petitioner had not worked continuously for a period of 240 days. Since June, 1989 upto May, 1990, the petitioner had merely worked for 184½ days. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 8 of the statement of claim. The respondent had refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondent at the time of the termination of his services. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case. Therefore, it cannot be said that the respondent had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

24. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

25. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

26. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue and that the instant claim petition is not maintainable in the present form.

27. This issue is decided against the petitioner and in favour of the respondent.

Issue No. 4 :

28. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

29. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

30. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent

to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 06/2018
Date of Institution : 28.3.2018
Date of Decision : 01.10.2019

Shri Kewal Singh s/o Shri Retho Ram, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.
For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Kewal Singh s/o Shri Retho Ram, r/o Village Dev Bharari, P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. during April, 1987 by the Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 24 years vide demand notice dated 23.07.2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a beldar on daily waged basis in May, 1986 in HPPWD Division Jassur (Nurpur), H.P. (now HPPWD Jawali) on various construction sites, like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari etc. However, his services were disengaged *w.e.f.* June, 1990 in violation of the law. The petitioner had completed 240 days in each calendar year. The respondent under a mistaken notion and ignorance of law had terminated the services of the petitioner in June, 1990. He thereafter had made oral requests to the respondent and his subordinates to re-engage him. Although, he was assured to be re-engaged after three or four months, but nothing was heard thereafter from the department. A letter in writing had also been sent by him to the department for his re-engagement on daily waged basis, but without success. Smt. Kusum Lata, junior to him was retained by the department and she at present is working in HPPWD Division Nurpur. Twenty four other juniors were also re-appointed by the department in the year 2010, as per the directions of the Hon'ble High Court. The principle of 'last come first go' was not adhered to by the respondent. No one month's notice, nor any retrenchment compensation had been paid to the petitioner. The provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been violated by the respondent. New/fresh hands had also been engaged and no opportunity was ever given to the petitioner for his re-engagement, thereby, violated the provisions of Section 25-H of the Act. The petitioner is not gainfully employed since the time of his illegal and unjustified termination by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was admitted by the respondent that the petitioner had been engaged as a daily wager in the year 1986. It was specifically denied that he had been disengaged in June, 1990. It was asserted that the petitioner worked intermittently *w.e.f.* December, 1986 to April, 1987 and thereafter had left the job of his own sweet will. It is denied that the petitioner had completed 240 days in each calendar year. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is admitted that HPPWD Division Jawali is involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Neither any junior had been retained nor engaged by the respondent, so there was no violation of any of the provisions of the Act. It is denied that a pick and choose policy had been adopted by the respondent. The persons mentioned at serial No.1 to 24 were engaged as per the directions of the Court. After leaving the work the petitioner had never approached the respondent and had raised the demand notice only in the year 2011. Only those workers had been regularized who had worked continuously and fulfilled the requisite criteria of regularization as per the Government policy. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 02.11.2018:

1. Whether termination of the service of petitioner by the respondent during April, 1987 is/was legal and justified as alleged? . . .OPP.
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .OPP.

3. Whether the claim petition is not maintainable in the present form as alleged?
..OPR.

4. Whether the claim petition is bad on account of delay and laches as alleged?
..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kewal Singh examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. Shri Jagtar Singh Thakur (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A. He also placed on the file copy of mandays chart of the petitioner as Ex.RW1/B, copy of notification dated 21.7.1994 as Ex.RW1/C and copy of letter dated 18.8.1994 as Ex.RW1/D.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Negative

Issue No. 3 : Yes

Issue No. 4 : No

Relief : Claim petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Kewal Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He also admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No.PBW-(A)-A(1)17/94. He denied that he had never worked in Jawali Division. He also denied that he had worked intermittently *w.e.f.* December, 1986 upto April, 1987 in the department. He further denied that he had left the work of his own. Volunteered that, from May, 1986 upto June, 1990 he had worked continuously. He specifically denied that he had never worked in the department continuously, nor he had ever been given breaks by the department. He feigned ignorance that the workers mentioned in the petition and the affidavit were kept at work in HPPWD Division Nurpur as per the orders of the Court. He specifically denied

that the respondent had adhered to the principle of 'last come first go'. He also denied that he had never worked for 240 days and above in any year. He further denied that only those workers had been regularized who had fulfilled the conditions of the policy of the Government for regularization. He admitted that he owns land, which he cultivates. He also admitted that he is doing the days' drudgery privately. Self stated that, as and when the work is available. He denied that he is making a phoney statement.

12. Conversely, Shri Jagtar Singh Thakur, Executive Engineer, HPPWD, Division Jawali (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

13. In the cross-examination, he denied that the petitioner had worked from May, 1986 till June, 1990 regularly and had completed 240 days. Volunteered that, as per their record, the petitioner had only worked for 65 days. He denied that the petitioner had been removed without any notice and that junior beldars/workers were retained. He admitted that no notice had been given to the petitioner to report for work. Self stated that he had left the job of his own. He further admitted that Ex.RW1/D contains the names of only those persons, who have been working in the department since the year 1994. Further, he denied that the petitioner had been given the assurance by the department that as and when the work would be available, he would be called. Further, he denied that intentionally incomplete muster rolls and other record pertaining to the petitioner had been filed.

14. Ex.RW1/B is the copy of the mandays chart relating to the petitioner.

15. Ex. RW1/C is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali alongwith sanctioned strength and staff.

16. Ex. RW1/D is the copy of Office Order dated 18.8.1994 regarding the transfer of work-charged staff to HPPWD Division Nurpur, on the closure of HPPWD Jassur and its opening at Jawali.

17. It is an admitted fact of the parties that the services of the petitioner were engaged as a daily waged beldar. Although, the petitioner claimed that he had worked as a beldar from May, 1986 upto June, 1990 but, however, the respondent has produced on record the mandays chart of the petitioner, copy of which is Ex.RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of December, 1986 for the first time as a daily waged beldar and he had worked as such upto April, 1987. The claimant/petitioner has not placed and exhibited on record any document to show that he had regularly worked with the respondent from May, 1986 upto June, 1990.

18. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after April, 1987 the petitioner had left the work of his own.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Jagtar Singh Thakur, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no

disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

20. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during April, 1987. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in June, 1990. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondent in the month of June, 1990. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Since, it has not been pleaded nor stated by the petitioner that his services stood terminated by the respondent in April, 1987, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

21. Even otherwise, Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

22. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Although, in his chief-examination the petitioner claimed that he had worked with the respondent as a beldar continuously from May, 1986 uptil June, 1990, but no mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138 that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 8 of the statement of claim. The respondent had refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondent at

the time of the termination of his services. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondent during the pendency of this case. Therefore, it cannot be said that the respondent had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

24. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

25. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3 :

26. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue and that the instant claim petition is not maintainable in the present form.

27. This issue is decided against the petitioner and in favour of the respondent.

Issue No. 4 :

28. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

29. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

30. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 22/2017
Date of Institution : 07.01.2017
Date of Decision : 01.10.2019

Shri Manjeet Kumar s/o Shri Prittam Chand, r/o Village and Post Office Paprola, Tehsil Baijnath, District Kangra, H.P. . *Petitioner.*

Versus

1. The Vice Chancellor, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondents : Smt. Rajni Katoch Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Vinod Kumar s/o Shri Diwan Chand, r/o Village Amtrar, P.O. Lilly, Tehsil Nagrota Bagwan, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhary Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhary Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. *w.e.f.* 01.09.2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondents as a daily waged worker on daily rated basis in Lab/Animal Husbandry department *w.e.f.* May, 2002 and he continued to work as such upto 01.9.2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Lab/Animal Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi

Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Seed Production department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application, when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2002 upto the year 2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference no.207/2010. It was accepted by the President of the union and application no.25/2010 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2002 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Seed Production department from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. When the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment

letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No.FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during the year 2008, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondents are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondents university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done by some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondents university at his own will. He had worked on contract basis from 2002 to 2008. He raised various bills. The head of department had not violated any provisions of the Act. The petitioner himself refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondents had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related to research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar project from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to

carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 17.4.2019:

1. Whether the verbal termination of services of the petitioner by the respondents *w.e.f.* 01-09-2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*
4. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? . . .*OPR.*
5. Whether this court has no jurisdiction to try the present case, as alleged? . . .*OPR.*
6. Whether the petitioner is/was not daily paid worker of the respondent as alleged? . . .*OPR.*
7. Whether the petitioner has not approached the Court with clean hands and has suppressed true and material facts from this Court, as alleged? . . .*OPR.*

Relief.

6. Arguments of the learned counsel for the respondents heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

| | |
|-------------|---|
| Issue No. 1 | : No |
| Issue No. 2 | : Negative |
| Issue No. 3 | : Yes |
| Issue No. 4 | : Not pressed |
| Issue No. 5 | : Not pressed |
| Issue No. 6 | : Not pressed |
| Issue No. 7 | : Not pressed |
| Relief | : Claim petition dismissed as per the operative portion of the Award. |

REASONS FOR FINDINGS

Issues No. 1 and 2 :

8. Both these issues are inter-related and inter-connected, hence jointly taken for adjudication.

9. The case was listed for evidence of the petitioner for today but, however, neither the petitioner nor his counsel/AR had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

10. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

11. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

12. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

13. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

14. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it

although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

15. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

16. As per the pleadings, it was firstly required of the petitioner to establish on record that he had been engaged as a daily waged beldar on muster roll basis by the respondents, as the same has been denied in the reply by the respondents and it is claimed that he had worked on contract basis during the period from 2008 to 2010, for which he has been raising bills for the work done and had been paid at rate not below the Government rates. Then, it was required of the petitioner to prove on record that the termination of his services during September, 2010 by the respondents was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof was led by him. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3 :

18. No evidence to prove this issue in the affirmative has been led by the respondents. Moreover, this issue was not pressed for by the learned counsel appearing for the respondents at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

Issues No.4 to 7 :

19. Not pressed

Relief :

20. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 100/2018

Date of Institution : 29.12.2018

Date of Decision : 05.10.2019

Shri Raj Kumar s/o Shri Ditta Ram, r/o Village Palnoti, P.O. Tarela, Tehsil Churah,
District Chamba, H.P. . *Petitioner.*

Versus

The Employer/Managing Director, M/S A.T. Hydro Project Private Limited, Upper Tarela,
P.O. Tarela, Tehsil Churah, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Raj Kumar s/o Shri Ditta Ram, r/o Village Palnoti, P.O. Tarela, Tehsil Churah, District Chamba, H.P. *w.e.f.* 01-12-2016 by the Employer/Managing Director, M/s A T Hydro Project Private Limited, Upper Tarela, P.O. Tarela, Tehsil Churah, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The

Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 01.12.2016 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 97/2018

Date of Institution : 29.12.2018

Date of Decision : 05.10.2019

Shri Kishan Chand s/o Shri Mahajan, r/o Village Guilla, P.O. Tarela, Tehsil Churah, District Chamba, H.P. . *Petitioner.*

Versus

The Employer/Managing Director, M/s A.T. Hydro Project Private Limited, Upper Tarela, P.O. Tarela, Tehsil Churah, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Kishan Chand s/o Shri Mahajan, r/o Village Guilla, P.O. Tarela, Tehsil Churah, District Chamba, H.P. *w.e.f.* 01-12-2016 by the Employer/Managing Director, M/S A T Hydro Project Private Limited, Upper Tarela, P.O. Tarela, Tehsil Churah, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 01.12.2016 by the respondent was without complying

with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 104/2018
Date of Institution : 29.12.2018
Date of Decision : 05.10.2019

Shri Desh Raj s/o Shri Dibhru, r/o Village Suilla, P.O. Tarela, Tehsil Churah, District Chamba, H.P. . .Petitioner.

Versus

The Employer/Managing Director, M/s Cimaron Construction Private Limited Upper Tarela, P.O. Tarela, Tehsil Churah, District Chamba, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner
For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Desh Raj s/o Shri Dibhru, r/o Village Suilla, P.O. Tarela, Tehsil Churah, District Chamba, H.P. w.e.f. 01-12-2016 by the

Employer/Managing Director, M/s Cimarón Construction Pvt. Ltd., Upper Tarela, P.O. Tarela, Tehsil Churah, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these

circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex-parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services w.e.f. 01.12.2016 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 217/2016

Date of Institution : 11.4.2016

Date of Decision : 05.10.2019

Shri Ram Kumar s/o Shri Shiv Lal, r/o Village Chaloli, P.O. Dharwas, Tehsil Pangi,
District Chamba, H.P. . . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P.
. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Uday Singh, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ram Kumar s/o Shri Shiv Lal, r/o Village Chaloli, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. during October, 2000 by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages for 29 days during year, 1990, 9 days during year 1993 and 30 days during year, 2000 respectively and has raised his industrial dispute after more than 11 years vide demand notice dated 26.12.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 29 days during year, 1990, 9 days during year, 1993 and 30 days during year, 2000 respectively and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis, without any appointment letter in the year 1997. He continuously worked with intermittent breaks upto October, 2000 with the respondent. Fictional breaks were given to him from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent has violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh has framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that he had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Sh. Suraj Ram, Chunku, Budhi Ram and Dev Raj. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1990 and who remained engaged till the year 2000. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and

volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2000, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2011, *i.e.* after about 11 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 14.11.2017:

1. Whether termination of services of the petitioner by the respondent during October, 2000 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ram Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of demand notice as Ex. PW1/B & copy of seniority list as Ex. PW1/C. Shri B.K. Kapil, Executive Engineer, HPPWD Killar (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner as Ex. RW1/B and copy of mandays chart of the co-workers as Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|-------------|--------------------------------------|
| Issue No. 1 | : Decided accordingly |
| Issue No. 2 | : Lump sum compensation of ₹10,000/- |
| Issue No. 3 | : Not pressed |

Issue No. 4 : Negative

Relief. : Petition is partly allowed awarding lump sum compensation of ₹10,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Ram Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had worked in the department from the year 1997 upto October, 2004. He denied that he had worked as a daily waged beldar from the year 1997 upto October, 2004. He also denied that he had worked from the year 1990 upto the year 2000. He specifically denied that in between he of his own had been absenting himself. Further, he denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He denied that he of his own had left the job after October, 2004. He admitted that the department had not given him breaks intentionally. He denied that no worker junior to him had been kept at work by the department. He owns land, which he cultivates. He denied that the department had adhered to the principle of 'last come first go'. He also denied that he is making a phoney statement.

11. Ex. PW1/B is the copy of demand notice served upon the respondent by the petitioner.

12. Ex. PW1/C is the copy of mandays chart relating to Sh. Suraj Ram & ors.

13. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment order had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were reengaged, the petitioner had not been called for work. He admitted that the petitioner had worked on muster roll.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/C is the mandays chart relating to the co-workers.

16. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex.RW1/B produced by the respondent is not in

dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of July, 1990 by the respondent and that he had worked as such intermittently upto September, 2000.

17. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after October, 2000, the petitioner had left the work of his own.

18. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri B.K. Kapil, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

20. Though, the petitioner in his statement of claim as well as his affidavit Ex.PW1/A claimed that he had completed more than 160 days in the preceding twelve calendar months, but this fact is not supported by any other oral or documentary evidence on record.

21. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In *R.M. Yellattu vs. Assistant Executive Engineer, (2006) 1 SCC 106*, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

22. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of October, 2000. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/C that he had only worked for 30 days in the immediate preceding year of his dismissal, which is below the required 160 days of working in the period of twelve

calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. Ex. PW1/C, the mandays chart of the workers who had worked in HPPWD Division, Killar (Pangi) reveals that Shri Jai Dass was appointed in the year 1998, whereas the services of Shri Tek Chand were engaged in the year 1999, while those of Shri Chunku Ram and Smt. Bhag Dei in the year 2000, that of Shri Parkash Chand, Smt. Sarita Devi, Shri Hari Ram and Shri Chuni Lal in the year 1997, of Shri Budhi Ram in the year 2001, of Shri Bhameshwar Dutt and Shri Baldev in the year 1995, Shri Raj Kumar in the year 1996, Shri Ram Dei in the year 2003 and Shri Balwant Kumar in the year 1994. Placed on record by the respondent is also the year-wise mandays detail of four workers in HPPWD Division, Killar (Pangi), as Ex.RW1/C. It also reveals that Shri Suraj Ram was appointed in the year 1997, while the services of Shri Chunku Ram and Shri Budhi Ram were engaged in the years 2000 and 2001 respectively. At the cost of reiteration, I will like to add that the month and year of initial appointment of the petitioner as per Ex.RW1/B is July, 1990. There is nothing on record to show that the above named workers were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

25. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G of the Act.

26. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given in Ex. PW1/C and Ex. RW1/C that all the above named workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been reengaged does not defeat the claim of petitioner that they were junior to her. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G of the Act, which as discussed above have been violated.

27. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

28. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

29. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82, wherein it was *inter-alia* held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

30. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

30. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651, by relying upon the cases of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wage or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly,

in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 68 days as a non-skilled worker. His services, as per the reference were disengaged in October, 2000 and had raised the industrial dispute by issuance of demand notice after more than **eleven years** i.e. demand notice was given on 26.12.2011. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

32. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹10,000/- (Rupees ten thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No. 4 is answered in the negative and decided against the respondent.

Issue No. 3 :

33. Not pressed.

Relief :

34. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹10,000/- (Rupees ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial

*Tribunal, Kangra at Dharamshala, H.P.***IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 40/2018

Date of Institution : 19.4.2018

Date of Decision : 14.10.2019

Shri Bhuri Singh s/o Shri Amar Singh, r/o VPO Sulyali, Tehsil Nurpur, District Kangra, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Pankaj Bhardwaj, Adv.

For the Respondent : Sh. Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Bhuri Singh s/o Shri Amar Singh, r/o V.P.O. Sulyali, Tehsil Nurpur, District Kangra, H.P. during October, 1987 by the Executive Engineer, H.P.P.W.D. Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after nearly 23 years *vide* demand notice dated 23.07.2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of nearly 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as a beldar on daily waged basis in May, 1986 in HPPWD Division Jassur (Nurpur), H.P. (now HPPWD Jawali) on various construction sites, like Bodh to Chaki Dhar Road, Suliali to Dev Bhrari etc. However, his services were disengaged *w.e.f.* June, 1990 in violation of the law. The petitioner had completed 240 days in each calendar year. The respondent under a mistaken notion and ignorance of law had terminated the services of the petitioner in June, 1990. He thereafter had made oral requests to the respondent and his subordinates to re-engage him. Although, he was assured to be re-engaged after three or four months, but nothing was heard thereafter from the department. A letter in writing had also been sent by him to the department for his re-engagement on daily waged basis, but without success. Smt. Kusum Lata, junior to him was retained by the department and she at present is working in HPPWD Division Nurpur. Twenty four other juniors were also re-appointed by the department in the year 2010, as per the directions of the Hon'ble High Court. The principle of 'last come first go' was not adhered to by the respondent. No one month's notice, nor any

retrenchment compensation had been paid to the petitioner. The provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been violated by the respondent. New/fresh hands had also been engaged and no opportunity was ever given to the petitioner for his re-engagement, thereby, violated the provisions of Section 25-H of the Act. The petitioner is not gainfully employed since the time of his illegal and unjustified termination by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. However, it was admitted by the respondent that the petitioner had been engaged as a daily wager in the year 1986. It was specifically denied that he had been disengaged in June, 1990. It was asserted that the petitioner worked intermittently w.e.f. January, 1986 upto October, 1987 and thereafter had left the job of his own sweet will. It is denied that the petitioner had completed 240 days in each calendar year. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is admitted that HPPWD Division Jawali is involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Neither any junior had been retained nor engaged by the respondent, so there was no violation of any of the provisions of the Act. It is denied that a pick and choose policy had been adopted by the respondent. The persons mentioned at serial No. 1 to 24 were engaged as per the directions of the Court. After leaving the work the petitioner had never approached the respondent and had raised the demand notice only in the year 2011. Only those workers had been regularized who had worked continuously and fulfilled the requisite criteria of regularization as per the Government policy. The respondent, thus, prays for the dismissal of the claim.

4. No rejoinder has been filed by the petitioner.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 20.03.2019:

1. Whether termination of services of the petitioner by the respondent during October, 1987 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form, as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant

District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : Negative

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in October, 1987 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in May, 1986 and had continuously worked as such till June, 1990. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, he cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 140 days in preceding

twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in October, 1987. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in paragraph 8 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, Smt. Kusum Lata and twenty four others, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:
"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

22. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 03/2017

Date of Institution : 05.1.2017

Date of Decision : 14.10.2019

Smt. Jaywant w/o Shri Janak Raj, r/o Village Kuthal, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D./I.&P.H. Division, Killar (Pangi), District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Uday Singh, Dy. D.A.
AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Smt. Jaywanti w/o Shri Janak Raj, r/o Village Kuthal, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. during September, 2004 by the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H., Killar (Pangi), District Chamba, H.P. who had worked on daily wages as beldar and has raised her industrial dispute after more than 7 years vide demand notice dated 08-12-2011, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster-roll basis, without any appointment letter in the year 1990. She continuously worked with intermittent breaks upto October, 2005 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent has violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh has framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Sh. Suraj Ram, Chunku, Budhi Ram, Dev Raj and Bhameshwar Dutt. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1991 and who remained engaged till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner

had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2000, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2011, *i.e.* after about 11 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 12.12.2018:

1. Whether termination of the services of the petitioner by the respondent during Sept., 2004 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Jaywanti appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of demand notice as Ex. PW1/B & copy of seniority list as Ex. PW1/C. Shri Rajeev Kumar (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of the co-workers as Ex. RW1/B and copy of mandays chart of the petitioner as Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

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|-------------|--|
| Issue No. 1 | : Decided accordingly |
| Issue No. 2 | : Lump sum compensation of ₹1,00,000/- |
| Issue No. 3 | : Not pressed |
| Issue No. 4 | : Negative |

Relief. : Petition is partly allowed awarding lump sum compensation of ₹1,00,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Jaywanti (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had not fulfilled the criteria of 160 days. She also denied that she had left the work of her own accord. She further denied that the department had never removed her from work. She admitted that they do agricultural chores. She denied that no junior to her had been kept at work by the department. She specifically denied that from the year 1991 upto the year 2004, she had worked intermittently. She further denied that the department had followed the provisions of the Act. She denied that she is making a phoney statement.

11. Ex. PW1/B is the copy of demand notice served upon the respondent by the petitioner.

12. Ex. PW1/C is the copy of mandays chart relating to Sh. Suraj Ram & seventeen others.

13. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner had worked in the department from the year 1991 upto the year 2004. He denied that the department had removed the petitioner from work. Volunteered that, she had left the work of her own. He denied that the petitioner had completed 160 days in every calendar year.

14. Ex. RW1/B is the mandays chart relating to the co-workers.

15. Ex. RW1/C is the mandays chart relating to the petitioner.

16. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. Though, the petitioner claimed that she had worked as a daily waged beldar with the respondent from the year 1990, but she has not placed and exhibited on the file any document evidencing that she had worked under the respondent since the aforesaid year. Looking to the mandays chart, Ex.RW1/C, which has been placed and proved on record by the respondent, it can be gathered that the services of the petitioner had initially been engaged by the respondent in the month of May, 1991 and that she had worked with the respondent/department intermittently upto September, 2004.

17. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or she herself had abandoned the job, as it is claimed by the petitioner that her services had orally been terminated by the respondent, whereas

the stand taken by the respondent is that after September, 2004, the petitioner had left the work of her own.

18. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajeev Kumar, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

20. Though, the petitioner in her statement of claim as well as her affidavit Ex.PW1/A claimed that she had completed more than 160 days in the preceding twelve calendar months, but this fact is not supported by any other oral or documentary evidence on record.

21. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. In **R.M. Yellatt vs. Assistant Executive Engineer. (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

22. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the month of September, 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/C that she had only worked for 53 days in the immediate preceding year of her dismissal, which is below the required 160 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.— Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. Ex. PW1/C, the mandays chart of the workers who had worked in HPPWD Division, Killar (Pangi) reveals that Shri Jai Dass was appointed in the year 1998, whereas the services of Shri Tek Chand were engaged in the year 1999, while those of Shri Chunku Ram and Smt. Bhag Dei in the year 2000, that of Shri Parkash Chand, Smt. Sarita Devi, Shri Hari Ram and Shri Chuni Lal in the year 1997, of Shri Budhi Ram in the year 2001, of Shri Bhameshwar Dutt and Shri Baldev in the year 1995, Shri Raj Kumar in the year 1996, Shri Ram Dei in the year 2003 and Shri Balwant Kumar in the year 1994. Placed on record by the respondent is also the year-wise mandays detail of five workers in HPPWD Division, Killar (Pangi), as Ex.RW1/B. It also reveals that Shri Suraj Ram was appointed in the year 1997, while the services of Shri Chunku Ram, Shri Budhi Ram and Shri Bameshwar Dutt were engaged in the years 2000, 2001 and 1995 respectively. At the cost of reiteration, I will like to add that the month and year of initial appointment of the petitioner as per Ex.RW1/C is May, 1991. There is nothing on record to show that the above named workers were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of ‘last come first go’. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

25. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G of the Act.

26. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given in Ex. PW1/C and Ex. RW1/B that all the above named workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been reengaged does not defeat the claim of petitioner that they were junior to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G of the Act, which as discussed above have been violated.

27. It is not the case of the petitioner that after her alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are not attracted in this case.

28. While testifying in the Court as PW1, the petitioner has given her age as 52 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

29. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

30. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

30. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651, by relying upon the cases of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 802 days as a non-skilled worker. Her services, as per the reference were disengaged in September, 2004 and had raised the industrial dispute by issuance of demand notice after more than *seven years i.e.* demand notice was given on 8.12.2011. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

32. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No. 4 is answered in the negative and decided against the respondent.

Issue No. 3 :

33. Not pressed.

Relief :

34. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 05/2016
Date of Institution : 02.1.2016
Date of Decision : 15.10.2019

Ms. Lal Dei d/o Shri Karam Singh, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D./I.&P.H. Division, Killar (Pangi), District Chamba, H.P. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Uday Singh, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by worker Ms. Lal Dei d/o Shri Karam Singh, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 25.04.2012 regarding her alleged illegal termination of service during August, 2003 suffers from delay and laches? If not, Whether termination of the services of Ms. Lal Dei d/o Shri Karam Singh, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during August, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis, without any appointment letter, in the year 1994. She continuously worked with intermittent breaks upto October, 2004 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent has violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh has framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Sh. Suraj Ram, Chunku, Budhi Ram, Dev Raj and Bhameshwar Dutt. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1997 and who remained engaged till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been

given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2013, *i.e.* after about 9 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 12.12.2018:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 25-04-2012 qua her termination of service during August, 2003 by respondent suffers from the vice of delay and laches as alleged? *..OPP.*
2. Whether termination of the service of petitioner by the respondent during August, 2003 is/was legal and justified as alleged? *..OPP.*
3. If issue No. 1 or issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? *..OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? *..OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Ms. Lal Dei appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of demand notice, as Ex. PW1/B & copy of seniority list as Ex. PW1/C. Shri Rajeev Sharma (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of the co-workers as Ex. RW1/B and copy of mandays chart of the petitioner as Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

| | |
|-------------|---|
| Issue No. 1 | : Negative |
| Issue No. 2 | : Decided accordingly |
| Issue No. 3 | : Negative |
| Issue No. 4 | : Yes |
| Relief. | : Petition is dismissed as per the operative part of the award. |

REASONS FOR FINDINGS

Issue No. 1 :

9. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

10. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issues No. 2 and 3 :

11. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

12. Ms. Lal Dei (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had not fulfilled the criteria of 160 days. She also denied that she had left the work of her own accord. She further denied that the department had never removed her from work. Further, she denied that she had been coming to work at her own convenience. She admitted that she owns some land, which she cultivates. She denied that no junior had been kept at work by the department. She specifically denied that from the year 1997 upto the year 2004, she had worked intermittently. She further denied that the department had followed the provisions of the Act.

13. Ex. PW1/B is the copy of demand notice served upon the respondent by the petitioner.

14. Ex. PW1/C is the copy of mandays chart relating to Sh. Suraj Ram & seventeen others.

15. Conversely, Shri Rajeev Sharma, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner had worked in the department from the year 1994 upto the year 2004. Volunteered that, she had worked from the year 1997 upto the year 2004. He also denied that the department had removed the petitioner from work. Self stated that she had left the work of her own. He denied that the petitioner had completed 160 days in every calendar year. He also denied that workers junior to the petitioner have been kept at work by the department.

16. Ex. RW1/B is the mandays chart relating to the co-workers.

17. Ex. RW1/C is the mandays chart relating to the petitioner.

18. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. Though, the petitioner claimed that she had worked as a daily waged beldar with the respondent from the year 1994, but she has not placed and exhibited on the file any document evidencing that she had worked under the respondent since the aforesaid year. Looking to the mandays chart, Ex. RW1/C, which has been placed and proved on record by the respondent, it can be gathered that the services of the petitioner had initially been engaged by the respondent in April, 1997 and that she had worked with the respondent/department intermittently upto September, 2004.

19. Now the point which comes to the fore for determination is whether the petitioner had been disengaged from service or she herself had abandoned the job.

20. It is well known that abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that she has left/abandoned the job. Mere statement of Shri Rajeev Sharma (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

21. Now comes the question as to whether in the month of August, 2003, the services of the petitioner were finally terminated by the respondent or not?

22. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during August, 2003. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in the month of October, 2004. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that she has claimed that her services had finally been terminated by the respondent in the month of

October, 2004. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Then, as per the mandays chart Ex.RW1/C, which is not in dispute, the petitioner is shown to have worked for a period of 27 days in the month of September and for 15 days in the month of October, 2004. She is also shown to have worked for 28 days, 31 days, 28 days and 22 days respectively for the months of June, July, August and September, 2004. Since, it has not been pleaded nor stated by the petitioner that her services stood terminated by the respondent in the month of August, 2003, therefore, the question of final termination of her services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

23. For the discussion and findings arrived at by me above, the allegations of the petitioner that the principle of 'last come first go' had not been adhered to and that she had not been given an opportunity of re-engagement by the respondent after her termination pale into insignificance.

24. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 4 :

25. Taking in to account my findings on issues No. 2 and 3 above, it is held that the claim petition is not maintainable in the present form. This issue is decided in favour of the respondent and against the petitioner.

Relief :

26. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

| | |
|---------------------|--------------|
| Ref. No. | : 04/2017 |
| Date of Institution | : 05.1.2017 |
| Date of Decision | : 15.10.2019 |

Ms. Guhli Devi d/o Shri Mohan Lal, r/o Village Udaini, P.O. Luj, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D./I.&P.H. Division, Killar (Pangi), District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Uday Singh, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Ms. Guhli Devi d/o Shri Mohan Lal, r/o Village Udaini, P.O. Luj, Tehsil Pangi, District Chamba, H.P. during October, 2000 by the Executive Engineer, Killar Division, H.P.P.W.D./I.&P.H. Killar (Pangi), District Chamba, H.P. who had worked on daily wages as beldar and has raised her industrial dispute after more than 11 years *vide* demand notice dated 02-01-2012, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis, without any appointment letter in the year 1990. She continuously worked with intermittent breaks upto October, 2000 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent has violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh has framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Sh. Suraj Ram, Chunku, Budhi Ram, Dev Raj and Bhameshwar Dutt. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1995 and who remained engaged till the year 2000. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2000, she certainly would have raised an industrial dispute, but the same was raised by her before the Labour Officer only in the year 2012, *i.e.* after about 12 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 21.11.2018:

1. Whether termination of the services of the petitioner by the respondent during October, 2000 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Ms. Guhli Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of demand notice as Ex. PW1/B & copy of seniority list as Ex. PW1/C. Shri Rajeev Kumar (respondent) appeared as RW1 and tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of the co-workers as Ex. RW1/B and copy of mandays chart of the petitioner as Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Decided accordingly

Issue No. 2 : Lump sum compensation of `1,00,000/-

Issue No. 3 : No

Issue No. 4 : Negative

Relief. : Petition is partly allowed awarding lump sum compensation of ₹1,00,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Ms. Guhli Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had worked intermittently from the year 1995 upto the year 2000. Volunteered that, she had worked regularly. She denied that she had not fulfilled the criteria of 160 days. She also denied that she had left the work of her own accord. She further denied that the department had never verbally removed her from work. She admitted that by doing agricultural chores, she earns her livelihood. She denied that no worker junior to her had been kept at work by the department. She further denied that the department had followed the provisions of the Act. She denied that she is making a phoney statement.

11. Ex. PW1/B is the copy of demand notice served upon the respondent by the petitioner.

12. Ex. PW1/C is the copy of mandays chart relating to Sh. Suraj Ram & seventeen others.

13. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner had worked in the department from the year 1990 upto the year 2000. Volunteered that, she had worked from the year 1993 upto the year 2000. He denied that the department had disengaged the petitioner. Self stated that she had left the work of her own. He denied that the petitioner had completed 160 days in every calendar year. He also denied that workers junior to the petitioner have been kept at work by the department.

14. Ex. RW1/B is the mandays chart relating to the co-workers.

15. Ex. RW1/C is the mandays chart relating to the petitioner.

16. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. Though, the petitioner claimed that she had worked as a daily waged beldar with the respondent from the year 1990, but she has not placed and exhibited on the file any document evidencing that she had worked under the respondent since the aforesaid year. Looking to the mandays chart, Ex. RW1/C, which has been placed and proved on record by the respondent, it can be gathered that the services of the petitioner had initially been engaged by the respondent in the month of May, 1993 and that she had worked with the respondent/department intermittently upto October, 2000.

17. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or she herself had abandoned the job, as it is claimed by the petitioner that her services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after October, 2000, the petitioner had left the work of her own.

18. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajeev Kumar, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

20. Though, the petitioner in her statement of claim as well as her affidavit Ex. PW1/A claimed that she had completed more than 160 days in the preceding twelve calendar months, but this fact is not supported by any other oral or documentary evidence on record.

21. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. In **R.M. Yellatt vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

22. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the month of October, 2000. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/C that she had only worked for 143 days in the immediate preceding year of her dismissal, which is below the required 160 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

24. Ex. PW1/B, the mandays chart of the workers who had worked in HPPWD Division, Killar (Pangi) reveals that Shri Jai Dass was appointed in the year 1998, whereas the services of Shri Tek Chand were engaged in the year 1999, while those of Shri Chunku Ram and Smt. Bhag Dei in the year 2000, that of Shri Parkash Chand, Smt. Sarita Devi, Shri Hari Ram and Shri Chuni Lal in the year 1997, of Shri Budhi Ram in the year 2001, of Shri Bhameshwar Dutt and Shri Baldev in the year 1995, Shri Raj Kumar in the year 1996, Shri Ram Dei in the year 2003 and Shri Balwant Kumar in the year 1994. Placed on record by the respondent is also the year-wise mandays detail of five workers in HPPWD Division, Killar (Pangi), as Ex.RW1/B. It also reveals that Shri Suraj Ram was appointed in the year 1997, while the services of Shri Chunku Ram, Shri Budhi Ram and Shri Bameshwar Dutt were engaged in the years 2000, 2001 and 1995 respectively. At the cost of reiteration, I will like to add that the month and year of initial appointment of the petitioner as per Ex.RW1/C is July, 1993. There is nothing on record to show that the above named workers were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

25. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G of the Act.

26. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given in Ex. PW1/C and Ex. RW1/B that all the

above named workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been reengaged does not defeat the claim of petitioner that they were junior to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from its accountability with regard to the provisions of Sections 25-G of the Act, which as discussed above have been violated.

27. It is not the case of the petitioner that after her alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

28. While testifying in the Court as PW1, the petitioner has given her age as 43 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. Otherwise too, during her cross-examination, the petitioner admitted that she is an agriculturist and earns her livelihood by doing agricultural chores. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed, so she is not entitled to the back wages.

29. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

30. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

31. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the

facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 695 days as a non-skilled worker. Her services, as per the reference were disengaged in October, 2000 and had raised the industrial dispute by issuance of demand notice after more than ***eleven years*** i.e. demand notice was given on 02.01.2012. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

32. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues no. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent.

Issue No. 3 :

33. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

34. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 89/2014
Date of Institution : 26.2.2014
Date of Decision : 17.10.2019

Shri Rajesh Sharma s/o Shri Braham Dass, r/o Village Satothar, P.O. Satodhar, Tehsil Amb, District Una, H.P. . *Petitioner.*

Versus

The Employer/Senior Vice President (Plant), M/s Swiss Garner Life Sciences, 21-23, Industrial Area Mehatpur, District Una, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Varun Sharma, Adv.
For the Respondent : Sh. R.S. Rana, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Rajesh Sharma, s/o Late Shri Braham Dass, r/o V.P.O. Satothar, Tehsil Amb, District Una, H.P. w.e.f. 16-07-2012 by the Employer/Senior Vice President (Plant), M/S Swiss Garnier Life Sciences, 21-23, Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services had been engaged by the company as an unskilled helper vide appointment order No.SGLS/HRD/2010-11, dated 30.7.2010 on a monthly consolidated salary/wages of Rs. 3,300/-. But, however, the petitioner had joined on 24.7.2010 and the appointment letter was issued to him on 30.7.2010. He had continuously worked in the company upto 15.7.2012 without any breaks. His act and conduct was found to be satisfactory and upto the mark. He had continuously worked from 24.7.2010 to 15.7.2012 and had

completed 240 days in each year. He thereafter had suddenly fallen ill on 16.7.2012 and had remained under treatment upto 27.10.2012. Regarding his illness, he had informed the respondent from time to time and had also submitted his medical certificate. On being declared fit, when he had reported for duty on 28.10.2012, he was not allowed to enter the factory by the security guard. He was told that verbal instruction had been passed not to allow him in the factory premises. Thereafter, the petitioner had been visiting the factory every day *w.e.f.* 28.10.2012 to 6.1.2013, but he was not allowed to resume his duties. A complaint was then made by him to the Labour Officer, Una on 7.1.2013. The respondent had treated him as absent *w.e.f.* 16.7.2012 onwards. He was not allowed to join the duties after his recovery and his sick leave was not marked, as granted by the ESIC department *w.e.f.* 18.7.2012 upto 27.10.2012. Neither one month's notice had been served, nor any pay and retrenchment compensation had been paid to him, as required under Section 25-F (a) & (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). As per clause 2 of the appointment letter dated 30.7.2010, his services had initially been engaged for three months *w.e.f.* 24.7.2010. After the lapse of three months, his services were continuously engaged by the respondent without any written order and he had worked upto 15.7.2010. The principle of 'last come first go' was not followed by the respondent, as persons junior to him were retained. New/fresh hands were appointed after his termination and he was not given an opportunity of re-employment. The act of the respondent in terminating his services is claimed to be highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability, locus standi, cause of action and that the petitioner has not come to the Court with clean hands. The contents of the petition were denied on merits. It was asserted that the petitioner was appointed as an unskilled helper on a consolidated salary of Rs. 3300/- per month. He was given a job purely on temporary basis for three months *w.e.f.* 30.7.2010. He had never worked continuously from the date of his joining upto 15.7.2012. He remained absent from duty for 58 days *w.e.f.* 1st day of July, 2011 upto December, 2011 and for 26 days from January, 2012 to 14th July, 2012. His performance was not upto the mark. The petitioner had availed 44 days of leave on medical ground. A number of opportunities had been given to him to mend his behaviour, but without success. Show cause notice was given to him on 27.7.2012 for remaining absent from duty. He only responded to it on 19.11.2012, wherein he admitted his guilt and had tendered an apology. He had also undertaken not to remain absent from duty in future. However, despite such undertaking, the petitioner had not resumed his duty. He had not completed 240 days in any calendar year. The provisions of Section 25-F (a) & (b) are not attracted in this case. The services of the petitioner had never been terminated by the respondent. He himself had abandoned the job on 15.7.2012. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 23.5.2015:

1. Whether termination of the services of the petitioner by the respondent *w.e.f.* 16.7.2012 is/was improper and unjustified as alleged? ..OPP.
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.

3. Whether the petition is not maintainable in the present form as alleged? . .*OPR.*
4. Whether the petitioner has no locus standi to file the present claim as alleged? .
..*OPR.*
5. Whether the petitioner has no cause of action to file the present case as alleged?
..*OPR.*
6. Whether the petitioner has not approached the Court with clean hands as alleged.
If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Rajesh Sharma examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of seniority list as Ex.PW1/B, mandays chart as Ex.PW1/C and copy of letter dated 15.7.2014 as Ex.PW1/D. The respondent examined one Shri Joginder Parsad Sharma as RW1. He tendered in evidence his statement by way of affidavit Ex. RW1/A, copy of appointment letter dated 24.10.2010 as Ex.RW1/B, copy of letter dated 27.7.2010 as Ex.RW1/C, copies of apology letters as Mark-X, Mark-X1 and Mark-X2, copy of seniority list as Mark-X3, copy of mandays chart as Mark-X4, copy of annual return as Mark-X5, copies of returns for the years 2010-11, 2011-12 and 2012-13 as Mark-X61 to Mark-X63, copy of ESIC half yearly return from 1.4.2012 to 30.9.2012 as Mark-X7 and from 1.10.2011 to 31.3.2012 as Mark-X71. The respondent has also examined Shri Vinod Kumar as RW2 and Shri Rakesh Kumar as RW3, who both tendered in evidence their statements by way of affidavits Ex. RW2/A and Ex.RW3/A respectively.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

| | |
|-------------|---|
| Issue No. 1 | : No |
| Issue No. 2 | : Negative |
| Issue No. 3 | : Yes |
| Issue No. 4 | : Yes |
| Issue No. 5 | : Yes |
| Issue No. 6 | : Not pressed |
| Relief | : Claim petition dismissed as per the operative portion of the Award. |

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Rajesh Sharma examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he stated that Ex.R1, Ex.R3 and Ex.R4 have been written by him. He admitted that as per Ex.PW1/D he had been granted leave for 91 days *w.e.f.* 16.7.2012 to 27.10.2012 by the ESI. He also admitted that he had been granted the leave, as on examination the Doctor at ESI had found him to be not mentally fit. After the leave he had submitted his fitness certificate to the company. He specifically denied that neither he is possessed with any fitness certificate, nor he has handed over the same to his employer. He specifically that he had never been disengaged by the respondent. He also denied that before filing this case the respondent had asked him to submit his fitness certificate. He further denied that he himself had abandoned the job.

11. Ex.PW1/B is the copy of total number of workers on company's roll.

12. Ex.PW1/C is the copy of Employee Attendance Register pertaining to the petitioner.

13. Ex.PW1/D is the copy of letter dated 15.7.2014 regarding information under RTI Act.

14. Conversely, Shri Joginder Parsad Sharma, DGM, Human Resource of the respondent testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was a worker of the respondent. He specifically denied that no compliant against the petitioner had ever been made by the Packing Incharge. He also denied that from 16.7.2012 upto 27.10.2012 the petitioner remained admitted in the hospital at Mehatpur. Volunteered that, on 15.7.2012 the petitioner had himself left the company. He further denied that the petitioner had informed the company regarding his illness and that he had also furnished his medical certificate. Further, he denied that the petitioner was declared fit by the Doctors and on 28.10.2012 he had reported to the company. He specifically denied that on that day he was not allowed to enter inside the company by the Security Guard. It was also denied by him that from 28.10.2012 upto 6.1.2013, the petitioner had been coming daily to the company to join, but he was not allowed to enter the gate. He also denied that during his engagement, the petitioner had completed 240 days and more. He further denied that neither any notice was served, nor the arrears were paid to the petitioner.

15. RW2 Shri Vinod Kumar Sepahiya, the Assistant Manager and RW3 Shri Rakesh Kumar, Supervisor have also been examined by the respondent, who both in their affidavits Ex.RW2/A and Ex.RW3/A have also supported the claim of the respondent.

In the cross-examination, RW2 Shri Vinod Kumar Sepahiya admitted that the petitioner had worked upto July, 2012. He also admitted that he had never informed the petitioner in writing qua his absence.

In the cross-examination, RW3 Shri Rakesh Kumar admitted that the petitioner had worked under him. He feigned ignorance as to whether any notice had been served upon the petitioner by the management regarding his absence.

16. Ex.RW/1B is the copy of letter dated 24th October, 2010 regarding appointment letter relating to the petitioner.

17. Ex.RW1/C is the copy of letter dated 27th July, 2012 regarding show cause issued by the respondent to the petitioner.

18. Ex.R1 is the copy of letter dated 22.10.2010 written by the petitioner to the respondent company.

19. Ex.R2 is the copy of letter dated 27.7.2012 regarding show cause sent by the respondent to the petitioner (which corresponds to Ex.RW1/C).

20. Ex.R3 is the copy of letter dated 19.11.2012 written by the petitioner to the respondent company.

21. Ex. R4 is the copy of letter written by the petitioner to the respondent company.

22. It is an admitted fact of the parties that the services of the petitioner were engaged as a helper by the respondent. Ex.PW1/B, the copy of list of workers of the respondent reflects the date of joining of the petitioner with the company as 24.7.2010.

23. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after 16th July, 2012 the petitioner had left the work of his own.

24. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statements of Shri Joginder Parsad Sharma (RW1), Shri Vinod Kumar Sepahiya (RW2) and Shri Rakesh Kumar (RW3) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

25. Then, it was contended by the learned counsel for the respondent that the petitioner had not worked for 240 days during the preceding twelve months and, therefore, he cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

26. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106**, it has been

laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

27. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Although, in his chief-examination the petitioner claimed that he had worked with the respondent as a helper continuously from 24.7.2010 upto 15.7.2012, but no mandays chart of his is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather from the abstract of employees attendance register pertaining to the petitioner, Ex.PW1/C, it is evident that he had worked only for 230 days in the immediate preceding year of his dismissal, which is below the required 240 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

28. It is claimed by the petitioner that principle of 'last come first go' has not been adhered to by the respondent. The respondent has refuted such allegation. Significantly, copy of seniority list has been placed and exhibited on record by the petitioner himself as Ex.PW1/B. Its perusal reveals that out of a total number of 86 workers, only two were junior to him, whose names have been reflected at serial No. 12 and 13. However, they both are shown to have left the job. No witness has been examined by the petitioner to show that the persons named at serial Nos. 12 and 13 of the list (Ex.PW1/B) were retained by the respondent at the time of the termination of his services. Therefore, it cannot be said that the respondent had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

29. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

30. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issues No. 3 to 5 :

31. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 6 :

32. Not pressed.

Relief :

33. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of October, 2019.

Sd/-
(**YOGESH JASWAL**),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 27/2017

Date of Institution : 07.1.2017

Date of Decision : 22.10.2019

Shri Sanam Kumar s/o Shri Hem Raj, r/o Village Ladoh, P.O. Panchrukhi, Tehsil Palampur, District Kangra, H.P. *. Petitioner.*

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. *. Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, AR

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Sanam Kumar s/o Shri Hem Raj, r/o Village Ladoh, P.O. Panchrukhi, Tehsil Palampur, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District

Kangra, H.P. during year, 2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Tea Farm Banuri, *w.e.f.* April, 2008 and he continued to work as such upto the year 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Tea Farm, Banuri in the department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Tea Farm Banuri to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2008 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this court vide Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the

rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Tea Farm Banuri from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayata Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. His name does not figure in the seniority lists of daily paid workers of the university. It was asserted that as the petitioner had never worked as a daily paid worker during the year 2008 in the Department of Tea Husbandry, the question of issuing appointment letter to him did not arise. The demands of union had not been considered by the respondents on the grounds that the services of the workers had not been engaged as daily paid labourers on muster roll basis. The tender to outsource the services of the workers was floated by the Department of Soil Science of the university and the tender of M/s Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. The Director of Research had not forced anyone to join/work under the agency. Since, the petitioner had never worked in the Department of Tea Husbandry during the year 2008, the HOD concerned had not violated any of the provisions of the Act. The Director of Research of the university had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related to research and scientific purposes. The deployment had been made for seasonal works, as per the requirement of the work. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/

resemblance with that of Smt. Promila Devi. The respondents had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 04.7.2018:

1. Whether the verbal termination of the services of the petitioner by the respondents during year, 2010 is/was legal and justified as alleged? .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? .*OPR.*
4. Whether the petitioner has no cause of action to file present case as alleged? .*OPR.*
5. Whether the petitioner has no locus standi to file the present case as alleged? .*OPR.*
6. Whether this court has no jurisdiction to file the present case as alleged? .*OPR.*
7. Whether the petitioner is/was daily paid worker of the respondents as alleged. If so, its effect? .*OPR.*
8. Whether the petitioner has not approached this court with clean hands as alleged? .*OPR.*
9. Whether the petitioner has suppressed true and material facts from the court as alleged? .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sanam Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondents examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copy of letter dated 8.7.1998 as Ex. RW1/D, copies of tentative seniority lists as on 31.3.2006 & 31.3.2008 as Ex. RW1/E & Ex. RW1/F, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/H, copy of application dated 26.7.2011 as Ex. RW1/I, copy of certificate dated 11.7.2014 as Ex. RW1/J, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/K to Ex. RW1/O, copy of Award dated 30.6.2014 as Ex. RW1/P and copy of order dated 20.3.2014 as Ex. RW1/Q.

7. Arguments of the learned Authorized Representative for the petitioner and the learned counsel for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

| | |
|-------------|--|
| Issue No. 1 | : Yes |
| Issue No. 2 | : No |
| Issue No. 3 | : Yes |
| Issue No. 4 | : Yes |
| Issue No. 5 | : Yes |
| Issue No. 6 | : Not pressed |
| Issue No. 7 | : No |
| Issue No. 8 | : Yes |
| Issue No. 9 | : Yes |
| Relief | : Petition is dismissed per operative part of the Award. |

REASONS FOR FINDINGS

Issues No. 1, 2 & 7 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Sanam Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager or to have worked in any department of the university. He also admitted that his name was not sponsored by the employment exchange to work in the university. He further admitted that he had not worked in any of the sanctioned posts of the university. Further, he admitted that he had never been kept by the department on muster roll. He feigned ignorance that the seniority list of only those persons is maintained, who are kept by the department on muster roll. He was also not aware that after the year 1998 no daily wager had ever been engaged. He denied these days he is working with the contractor. He also denied that he is making a phoney statement.

11. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondents.

In the cross-examination, he denied that the petitioner was kept at work in the year 2008. Volunteered that, he had never worked with the respondents and thereafter stated that after the year 2010 the workers had been kept on outsource basis. Earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2008 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

12. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

13. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

14. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

15. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

16. Ex. RW1/D is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

17. Ex. RW1/E is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

18. Ex. RW1/F is the copy of letter dated 25.5.2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

19. Ex. RW1/G is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahayata Security Services.

20. Ex. RW1/H is the copy of certificate of registration relating to M/s. Sun Security Service.

21. Ex. RW1/I is the copy of application for registration of establishments employing contract labour.

22. Ex. RW1/J is the copy of certificate of registration dated 11.7.2014 pertaining to M/s Nu Vision Commercial & Escort Services.

23. Ex. RW1/K is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

24. Ex. RW1/L is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

25. Ex. RW1/M is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

26. Ex. RW1/N is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

27. Ex. RW1/O is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

28. Ex. RW1/P is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

29. Ex. RW1/Q is the copy of order dated 20.3.2014 passed in Reference No.207/2010 by this Court.

30. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

31. In the case on hand, it was asserted by the petitioner that he was a workman of the respondents, being appointed on daily wage basis. The respondents denied this fact and claimed that had he been engaged as a daily paid labourer on muster-roll basis, his name ought to have figured in the seniority list of daily paid labourers of the university circulated in the years 2006 and 2008. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. On the contrary, the respondents have placed on record the revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. RW1/E and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex. RW1/F. These documents were not disputed by the petitioner. A perusal of these documents would reveal that the name of the petitioner does not figure in them anywhere. No reason has been assigned by the petitioner as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Be it recorded here, the petitioner in his substantive evidence categorically admitted that he had not been kept on muster roll by the department. Then, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. RW1/D. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. RW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. So, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2008 as a daily paid worker by the respondents. In view of the admission made by the

petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondents.

32. Next, it was claimed by the petitioner that he had worked continuously with the respondents from the year 2008 upto the year 2010, without any breaks. No such record has been seen in the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondents, his name ought to have figured in the seniority lists maintained by the respondents. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondents and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

33. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

34. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

35. Reference was also made by the petitioner to the case titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the

management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondents, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

36. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster-roll was prepared regarding his work, nor his name figured in the seniority lists of daily paid workers maintained by the respondents. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues No. 1 and 2 are decided against the petitioner, while issue No. 7 is answered in the negative.

Issues No. 3 to 5, 8 & 9 :

37. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage (s). These issues are answered in the affirmative and are decided in favour of the respondents.

Issue No. 6 :

38. Not pressed.

Relief :

39. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 19/2017

Date of Institution : 07.1.2017

Date of Decision : 22.10.2019

Shri Sanjay Kumar s/o Shri Amar Singh, r/o Village Majhenu, P.O. Panchrukhi, Tehsil Palampur, District Kangra, H.P. .*Petitioner.*

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Sanjay Kumar s/o Shri Amar Singh, r/o Village Majhenu, P.O. Panchrukhi, Tehsil Palampur, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. during April, 2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Organic Agro Forestry department *w.e.f.* March, 2006 and he continued to work as such upto March/April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Organic Farm department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Organic Agro Forestry department to join the rolls of the contractor, namely

Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto the year 2010. The petitioner was also a member of the union and reference had been made to this court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Organic Agro Forestry department from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified,

arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. His name does not figure in the seniority lists of daily paid workers of the university. It was asserted that as the petitioner had never worked as a daily paid worker during the year 2008 in the Department of Tea Husbandry, the question of issuing appointment letter to him did not arise. The demands of union had not been considered by the respondents on the grounds that the services of the workers had not been engaged as daily paid labourers on muster roll basis. The tender to outsource the services of the workers was floated by the Department of Soil Science of the university and the tender of M/s Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. The Director of Research had not forced anyone to join/work under the agency. Since, the petitioner had never worked in the Department of Crop Improvement during the year 2008, the HOD concerned had not violated any of the provisions of the Act. The Director of Research of the university had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related to research and scientific purposes. The deployment had been made for seasonal works, as per the requirement of the work. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 04.7.2018:

1. Whether the verbal termination of the services of the petitioner by the respondents during April, 2010 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

4. Whether the petitioner has no cause of action to file present case as alleged? ..*OPR*.
5. Whether the petitioner has no locus standi to file the present case as alleged? ..*OPR*.
6. Whether this court has no jurisdiction to file the present case as alleged? ..*OPR*.
7. Whether the petitioner is/was daily paid worker of the respondents as alleged. If so, its effect? ..*OPR*.
8. Whether the petitioner has not approached this court with clean hands as alleged? ..*OPR*.
9. Whether the petitioner has suppressed true and material facts from the court as alleged? ..*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sanjay Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondents examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copy of letter dated 8.7.1998 as Ex. RW1/D, copies of tentative seniority lists as on 31.3.2006 & 31.3.2008 as Ex. RW1/E & Ex. RW1/F, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/H, copy of application dated 26.7.2011 as Ex. RW1/I, copy of certificate dated 11.7.2014 as Ex. RW1/J, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/K to Ex. RW1/O, copy of Award dated 30.6.2014 as Ex. RW1/P and copy of order dated 20.3.2014 as Ex. RW1/Q.

7. Arguments of the learned Authorized Representative for the petitioner and the learned counsel for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

| | |
|-------------|---------------|
| Issue No. 1 | : Yes |
| Issue No. 2 | : No |
| Issue No. 3 | : Yes |
| Issue No. 4 | : Yes |
| Issue No. 5 | : Yes |
| Issue No. 6 | : Not pressed |
| Issue No. 7 | : No |
| Issue No. 8 | : Yes |
| Issue No. 9 | : Yes |

Relief

: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS*Issues No.1, 2 & 7 :*

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Sanjay Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager or to have worked in any department of the university. He also admitted that his name was not sponsored by the employment exchange to work in the university. He further admitted that he had not worked in any of the sanctioned posts of the university. Further, he admitted that he had never been kept by the department on muster-roll. He feigned ignorance that the seniority list of only those persons is maintained, who are kept by the department on muster roll. He was also not aware that after the year 1998 no daily wager had ever been engaged. He denied these days he is working with the contractor. He also denied that he is making a phoney statement.

11. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondents.

In the cross-examination, he denied that the petitioner was kept at work in the year 2006. Volunteered that, he had never worked with the respondents and thereafter stated that after the year 2010 the workers had been kept on outsource basis. Earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2008 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

12. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

13. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

14. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

15. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

16. Ex.RW1/D is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

17. Ex.RW1/E is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

18. Ex.RW1/F is the copy of letter dated 25.5.2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

19. Ex.RW1/G is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahayata Security Services.

20. Ex. RW1/H is the copy of certificate of registration relating to M/s. Sun Security Service.

21. Ex. RW1/I is the copy of application for registration of establishments employing contract labour.

22. Ex.RW1/J is the copy of certificate of registration dated 11.7.2014 pertaining to M/s Nu Vision Commercial & Escort Services.

23. Ex. RW1/K is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

24. Ex. RW1/L is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

25. Ex. RW1/M is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

26. Ex. RW1/N is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

27. Ex. RW1/O is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

28. Ex. RW1/P is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

29. Ex. RW1/Q is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

30. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514.** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

31. In the case on hand, it was asserted by the petitioner that he was a workman of the respondents, being appointed on daily wage basis. The respondents denied this fact and claimed that had he been engaged as a daily paid labourer on muster roll basis, his name ought to have figured in the seniority list of daily paid labourers of the university circulated in the years 2006 and 2008. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. On the contrary, the respondents have placed on record the revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. RW1/E and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex. RW1/F. These documents were not disputed by the petitioner. A perusal of these documents would reveal that the name of the petitioner does not figure in them anywhere. No reason has been assigned by the petitioner as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Be it recorded here, the petitioner in his substantive evidence categorically admitted that he had not been kept on muster roll by the department. Then, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. RW1/D. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. RW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. So, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker by the respondents. In view of the admission made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondents.

32. Next, it was claimed by the petitioner that he had worked continuously with the respondents from the year 2006 upto the year 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondents, his name ought to have figured in the seniority lists maintained by the respondents. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondents and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

33. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172.** I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

34. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1. 2010 LLR 1165.** where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

35. Reference was also made by the petitioner to the case titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others. 2015 LLR 974.** wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers. 2008 LLR 509.** wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondents, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

36. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll was prepared regarding his work, nor his name figured in the seniority lists of daily paid workers maintained by the respondents. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are decided against the petitioner, while issue No.7 is answered in the negative.

Issues No. 3 to 5, 8 & 9 :

37. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondents.

Issue No. 6 :

38. Not pressed.

Relief :

39. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 147/2014
Date of Institution : 16.4.2014
Date of Decision : 22.10.2019

Shri Desh Raj s/o Shri Nek Ram, r/o Village and P.O. Patti, Tehsil Palampur, District Kangra, H.P. . .Petitioner.

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Desh Raj s/o Shri Nek Ram, r/o Village and P.O. Patti, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar,

Chaudhery Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?"

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry & Organic Agriculture department *w.e.f.* the year 2006 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agroforestry & Organic Agriculture department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry and Organic Agriculture department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely,

M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control and supervision of the project investigator and he had only been making the payments to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agroforestry & Organic Agriculture department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days w.e.f. 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during June, 2007, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor from June, 2007 to January, 2009. He had raised various bills from time to time. The head of department had not violated any of the provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated

14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verified the work done, monthly attendance and wages bill of the Contractor/individual concerned to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Desh Raj appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of agreement dated 30.8.2010 as Ex.PW1/B, copy of proceedings dated 4.4.2009 as Ex.PW1/C, copy of letter dated 4.9.1986 as Ex.PW1/D and copy of appointment letter of Smt. Promila Devi as Ex.PW1/E. The respondent examined one Dr. Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit

Ex. RW1/A, copy of letter dated 10.11.2010 as Ex.RW1/B, copy of seniority list category D as Ex.RW1/C, copy of letter dated 4.10.2007 *i.e.* tentative seniority list as on 31.3.2006 as Ex.RW1/D, copy of letter dated 25.5.2009 *i.e.* seniority list as on 31.3.2008 as Ex.RW1/E, copy of notification dated 13.11.1998 as Ex.RW1/F, copy of letter dated 8.7.1998 as Ex.RW1/G, copy of letter dated 17.2.1999 as Ex.RW1/H, copy of letter dated 26.4.1999 as Ex.RW1/J, copy of mandays chart of the petitioner as Ex.RW1/K, copies of payment receipts as Ex.RW1/L to Ex.RW1/Y, copy of Award as Ex.RW1/Z, copy of letter dated 29.1.2011 as Ex.RW1/Z1, copy of letter dated 29.1.2011 as Ex.RW1/Z2 and copy of renewal registration of M/s Sahayta Security as Ex.RW1/Z3.

7. Arguments of the learned Authorized Representative for the petitioner and the learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

| | |
|-------------|--|
| Issue No. 1 | : No |
| Issue No. 2 | : No |
| Issue No. 3 | : Yes |
| Issue No. 4 | : Yes |
| Issue No. 5 | : Yes |
| Relief | : Petition is dismissed per operative part of the Award. |

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Desh Raj examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/E.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid workers is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster roll of his has been placed on record by him. It was also admitted by him that as per the policy of the Government only those employees were regularized whose names were there in the muster roll. He also admitted that he had worked in various projects of different departments of the university. These days he is not working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in

different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. Ex. PW1/B is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

12. Ex. PW1/C is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

13. Ex. PW1/D is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

14. Ex. PW1/E is the copy of office order dated 19th July, 2010 issued by the Registrar, CSK, HPKV, Palampur.

15. Conversely, Dr. Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner had worked from the year 2006 upto the year 2010. Volunteered that, after the year 2010, workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

16. Ex. RW1/B is the copy of memorandum dated 10th November, 2010.

17. Ex. RW1/C is the tentative seniority list of category 'D' employees working in the CSKHPKV, Palampur as it stood on 1.6.2010.

18. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

19. Ex. RW1/E is the copy of letter dated 25.5.2009 regarding seniority list of daily waged workers/Mess workers as on 31.3.2008.

20. Ex. RW1/F is the copy of Notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

21. Ex. RW1/G is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

22. Ex. RW1/H is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

23. Ex. RW1/J is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

24. Ex. RW1/K is the copy of working detail of the petitioner.

25. Ex. RW1/L to Ex. RW1/Y are the copies of various contingent bills/bills pertaining to the petitioner and others.

26. Ex. RW1/Z is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

27. Ex. RW1/Z-1 is copy of letter dated 29.1.2011 regarding registration of establishment.

28. Ex. RW1/Z-2 is the copy of certificate of registration dated 29.1.2011 issued by Labour Officer-cum-Registering Officer District Kangra at Dharamshala.

29. Ex. RW1/Z-3 is the copy of license dated 5.8.2006 relating to M/s Sahayata Security.

30. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

31. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis and had raised the bills, payment of which have been made to him at the rate not below the government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/K. It shows that the petitioner had earlier worked on individual work contract basis from the year 2007 upto the year 2009. Later on, as per this document, he is shown to have refused to work under the registered contractor in the year 2010 but, however, in the year 2011, he had worked under a registered contractor. Then, the respondent has tendered in evidence a copy of seniority list as Ex. RW1/D of daily waged workers in the university, as it stood on 31.3.2006. Placed on record by the respondent is also a copy of seniority list of daily waged workers in the university, as it stood on 31.3.2008, as Ex. RW1/E. The name of the petitioner does not figure in these seniority lists anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was

ever raised by him for his name not being there in the seniority list(s). No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list(s). It is the specific case of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that at the time of appointment of a daily wager, appointment letter is issued. He also admitted that he had worked in different projects of the various departments of the university. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he has not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.R-1 to Ex.R-16 and Ex.RW1/L to Ex.RW1/Y, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being bills/contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex.RW1/G. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex.RW1/F, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex.RW1/H, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

32. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2006 uptil March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority lists maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Apex Court that the filing of an affidavit is only his own statement in his favour and it cannot be regarded as sufficient evidence for any Court or Tribunal to come to a conclusion that a workman had, infact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

33. In all fairness the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172.** For the reasons recorded hereinabove, as the petitioner has failed to establish on record that he was appointed as a daily paid worker on muster roll by the respondent, the petitioner cannot derive any advantage of what has been discussed in these cases.

34. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1. 2010 LLR 1165.** where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

35. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974.** wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509.** wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

36. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and decided against the petitioner.

Issues No. 3 to 5 :

37. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and decided in favour of the respondent.

Relief :

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 171/2014

Date of Institution : 17.4.2014

Date of Decision : 22.10.2019

Shri Pardeep Kumar s/o Late Shri Gian Chand, r/o Village Chatter, P.O. Andretta, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Pardeep Kumar, s/o Late Shri Gian Chand, r/o Village Chatter, P.O. Andretta, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya (C.S.K.H.P.K.V.) Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010,

without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/ University?"

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Plant Breeding department *w.e.f.* January, 2006 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Plant Breeding department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but, the respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Plant Breeding department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No.207/2010. It was accepted by the President of the union and application No.25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in

the control and supervision of the project investigator and he had only been making the payments to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Plant Breeding department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during September, 2007, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor from September, 2007 to November, 2009. He had raised various bills from time to time. The head of department had not violated any of the provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number which

had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verified the work done, monthly attendance and wages bill of the Contractor/individual concerned to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Pardeep Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 8.7.1998 as Ex. PW1/B, copy of notification dated 13.11.1998 as Ex. PW1/C, copy of office order dated 17.2.1999 as Ex. PW1/D, copy of notification dated 26.4.1999 as Ex. PW1/E, copy of letter dated 4.9.1986 as Ex. PW1/F, copy of statue as Ex. PW1/G, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of Agreement as Ex. PW1/I, copy of office order dated 19.7.2010 as Ex. PW1/J and copy of Seniority list as on 31.3.2006 as Ex. PW1/K. The respondent examined one Dr.

Dinesh Kumar Vatsa, Director, Research, CSK, HPKV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of letter dated 10.11.2010 as Ex.RW1/B, copy of letter dated 4.10.2007 *i.e.* tentative seniority list as on 31.3.2006 as Ex.RW1/C, copy of letter dated 25.5.2009 *i.e.* seniority list as on 31.3.2008 as Ex.RW1/D, copy of notification dated 13.11.1998 as Ex.RW1/E, copy of letter dated 8.7.1998 as Ex.RW1/F, copy of letter dated 17.2.1999 as Ex.RW1/G, copy of letter dated 26.4.1999 as Ex.RW1/H, copy of mandays chart of the petitioner as Ex.RW1/J, copy of Award dated 30.6.2014 as Ex.RW1/K, copy of order dated 20.3.2014 as Ex.RW1/L, copy of letter dated 29.1.2011 as Ex.RW1/M, copy of registration of M/s Sahayta Security as Ex.RW1/N and copy of renewal of licence as Ex.RW1/O.

7. Arguments of the learned Authorized Representative for the petitioner and the learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

| | |
|-------------|--|
| Issue No. 1 | : No |
| Issue No. 2 | : No |
| Issue No. 3 | : Yes |
| Issue No. 4 | : Yes |
| Issue No. 5 | : Yes |
| Relief | : Petition is dismissed per operative part of the Award. |

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Pardeep Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid workers is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster roll of his has been placed on record by him. It was also admitted by him that as per the policy of the Government only those employees were regularized whose names were there in the muster roll. He also admitted that he had worked in various projects of different departments of the university. These days he is not working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in

different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

12. Ex. PW1/C is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

13. Ex. PW1/D is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/E is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/F is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

16. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

17. Ex. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

18. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

19. Ex. PW1/J is the copy of office order dated 19.7.2010 issued by the Registrar, CSK, HPKV, Palampur.

20. Ex. PW1/K is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

21. Conversely, Dr. Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner had worked from the year 2006 upto the year 2010. Volunteered that, after the year 2010 workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in every year and that his

mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

22. Ex.RW1/B is the copy of memorandum dated 10th November, 2010.
23. Ex.RW1/C is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.
24. Ex.RW1/D is the copy of letter dated 25.5.2009 regarding seniority list of daily waged workers/Mess workers as on 31.3.2008.
25. Ex.RW1/E is the copy of Notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.
26. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development—Economy instructions.
27. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.
28. Ex. RW1/H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.
29. Ex. RW1/J is the copy of working detail of the petitioner.
30. Ex. R-1 to Ex. R-15 are the copies of various contingent bills/bills pertaining to the petitioner and others.
31. Ex.RW1/K is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.
32. Ex.RW1/L is the copy of order dated 20.3.2014 passed in Reference No.207/2010 by this Court.
33. Ex. RW1/M is copy of letter dated 29.1.2011 regarding registration of establishment.
34. Ex. RW1/N is the copy of certificate of registration dated 29.1.2011 issued by Labour Officer-cum-Registering Officer District Kangra at Dharamshala.
35. Ex. RW1/O is the copy of license dated 5.8.2006 relating to M/s Sahayata Security.
36. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In *Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu*, (2004) 3 SCC 514, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

37. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis and had raised the bills, payment of which have been made to him at the rate not below the government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex.RW1/J. It shows that the petitioner had earlier worked on individual work contract basis from September, 2007 to November, 2009. Later on, as per this document, he is shown to have refused to work under the registered contractor in the year 2010 but, however, in the year 2011, he had worked under a registered contractor. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex.PW1/K (also Ex.RW1/D) of daily waged workers in the university, as it stood on 31.3.2008. Placed on record by the respondent is also a copy of seniority list of daily waged workers in the university, as it stood on 31.3.2006, as Ex. RW1/C. The name of the petitioner does not figure in these seniority lists anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name not being there in the seniority list(s). No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list(s). It is the specific case of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that at the time of appointment of a daily wagger, appointment letter is issued. He also admitted that he had worked in different projects of the various departments of the university. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he has not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.R-1 to Ex.R-15 which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being bills/contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B (also Ex.RW1/F). It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C (also Ex.RW1/E), that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex.PW1/D (also Ex.RW1/G), the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

38. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2006 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the

petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367.** it has been laid down by the Hon'ble Apex Court that the filing of an affidavit is only his own statement in his favour and it cannot be regarded as sufficient evidence for any Court or Tribunal to come to a conclusion that a workman had, infact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

39. In all fairness the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172.** For the reasons recorded hereinabove, as the petitioner has failed to establish on record that he was appointed as a daily paid worker on muster roll by the respondent, the petitioner cannot derive any advantage of what has been discussed in these cases.

40. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-I, 2010 LLR 1165.** where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

41. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974.** wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509.** wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

42. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and decided against the petitioner.

Issues No. 3 to 5 :

43. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and decided in favour of the respondent.

Relief :

44. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 156/2014

Date of Institution : 16.4.2014

Date of Decision : 22.10.2019

Shri Vinod Kumar s/o Shri Ramdhan, r/o Village and P.O. Bhoura, Tehsil Palampur,
District Kangra, H.P. *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav
Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Vinod Kumar s/o Shri Ramdhan, r/o Village and P.O. Bhoura, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhery Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/ university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry & Organic Agriculture department *w.e.f.* 5.5.2007 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agroforestry & Organic Agriculture department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry and Organic Agriculture department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2007 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference no.207/2010. It was accepted by the President of the union and application No.25/2011 was withdrawn by the union. Reference No.207/2010 was also

withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent w.e.f. 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control and supervision of the project investigator and he had only been making the payments to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agroforestry & Organic Agriculture department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days w.e.f. 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during July, 2007, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster

roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor from July, 2007 to January, 2009. He had raised bills from time to time. The head of department had not violated any of the provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill of the Contractor/individual concerned to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*

4. Whether the petitioner has no locus standi to file the case as alleged? . . . OPR.
5. Whether the petitioner has no cause of action to file the present case as alleged? . . . OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Vinod Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of agreement dated 30.8.2010 as Ex.PW1/B, copy of proceedings dated 4.4.2009 as Ex.PW1/C, copy of letter dated 4.9.1986 as Ex.PW1/D and copy of appointment letter of Smt. Promila Devi as Ex.PW1/E. The respondent examined one Dr. Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of letter dated 10.11.2010 as Ex.RW1/B, copy of letter dated 4.10.2007 *i.e.* tentative seniority list as on 31.3.2006 as Ex.RW1/C, copy of letter dated 25.5.2009 *i.e.* seniority list as on 31.3.2008 as Ex.RW1/D, copy of notification dated 13.11.1998 as Ex.RW1/E, copy of letter dated 8.7.1998 as Ex.RW1/F, copy of letter dated 17.2.1999 as Ex.RW1/G, copy of letter dated 26.4.1999 as Ex.RW1/H, copy of mandays chart of the petitioner as Ex.RW1/J, copies of payment receipts as Ex.RW1/K to Ex.RW1/X. copy of Award as Ex.RW1/Y, copy of order dated 20.3.2014 as Ex.RW1/Z, copy of letter dated 29.1.201 as Ex.RW1/Z1, copy of registration Sahayta Security as Ex.RW1/Z2 and copy of renewal of licence as Ex.RW1/Z3.

7. Arguments of the learned Authorized Representative for the petitioner and the learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

| | |
|-------------|--|
| Issue No. 1 | : No |
| Issue No. 2 | : No |
| Issue No. 3 | : Yes |
| Issue No. 4 | : Yes |
| Issue No. 5 | : Yes |
| Relief | : Petition is dismissed per operative part of the Award. |

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Vinod Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/E.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid workers is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster roll of his has been placed on record by him. It was also admitted by him that as per the policy of the government only those employees were regularized whose names were there in the muster roll. He also admitted that he had worked in various projects of different departments of the university. These days he is not working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. Ex. PW1/B is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

12. Ex. PW1/C is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

13. Ex. PW1/D is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

14. Ex. PW1/E is the copy of office order dated 19th July, 2010 issued by the Registrar, CSK, HPKV, Palampur.

15. Conversely, Dr. Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner had worked from the year 2007 upto the year 2010. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

16. Ex. RW1/B is the copy of memorandum dated 10th November, 2010.

17. Ex. RW1/C is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

18. Ex.RW1/D is the copy of letter dated 25.5.2009 regarding seniority list of daily waged workers/Mess workers as on 31.3.2008.

19. Ex.RW1/E is the copy of Notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

20. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

21. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

22. Ex. RW1/H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

23. Ex. RW1/J is the copy of working detail of the petitioner.

24. Ex. RW1/K to Ex. RW1/X are the copies of various contingent bills/bills pertaining to the petitioner and others.

25. Ex.RW1/Y is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

26. Ex.RW1/Z is the copy of order dated 20.3.2014 passed in Reference No.207/2010 by this Court.

27. Ex.RW1/Z-1 is the copy of letter dated 29.1.2011 regarding registration of establishment.

28. Ex.RW1/Z-2 is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahayata Security Services.

29. Ex.RW1/Z-3 is the copy of Licence pertaining to M/s Sahayata Security.

30. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

31. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis and had raised the bills, payment of which have been made to him at the rate not below the government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as

Ex.RW1/J. It shows that the petitioner had earlier worked on individual work contract basis from the year 2007 upto the year 2009. Later on, as per this document, he is shown to have refused to work under the registered contractor in the year 2010 but, however, in the year 2011, he had worked under a registered contractor. Then, the respondent has tendered in evidence a copy of seniority list as Ex.RW1/C of daily waged workers in the university, as it stood on 31.3.2006. Placed on record by the respondent is also a copy of seniority list of daily waged workers in the university, as it stood on 31.3.2008, as Ex. RW1/D. The name of the petitioner does not figure in these seniority lists anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name not being there in the seniority list(s). No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list(s). It is the specific case of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that at the time of appointment of a daily wagger, appointment letter is issued. He also admitted that he had worked in different projects of the various departments of the university. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he has not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.R-1 to Ex.R-14 and Ex.RW1/K to Ex.RW1/X, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being bills/contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex.RW1/F. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex.RW1/E, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex.RW1/G, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2007 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

32. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2007 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of

there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Apex Court that the filing of an affidavit is only his own statement in his favour and it cannot be regarded as sufficient evidence for any Court or Tribunal to come to a conclusion that a workman had, infact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

33. In all fairness the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. For the reasons recorded hereinabove, as the petitioner has failed to establish on record that he was appointed as a daily paid worker on muster roll by the respondent, the petitioner cannot derive any advantage of what has been discussed in these cases.

34. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

35. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

36. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and decided against the petitioner.

Issues No. 3 to 5 :

37. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and decided in favour of the respondent.

Relief :

38. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 15/2019

Date of Institution : 25.2.2019

Date of Decision : 24.10.2019

Smt. Parvati Devi w/o Shri Nageshwar, r/o House No.91/4, Suhara Muhalla, Mandi,
District Mandi, H.P.*Petitioner.*

Versus

1. The Board of Directors, the Mandi Urban Co-operative Bank Limited, Moti Bazar,
Mandi, District Mandi, H.P.

2. The Manager, The Mandi Urban Co-operative Bank Limited, Moti Bazar, Mandi,
District Mandi, H.P.*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Petitioner in person with Sh. Deepak Azad, Adv.

For the Respondents : Sh. Priyanka Sharma, adv. Vice

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:

“Whether demand of Smt. Parvati Devi w/o Shri Nageshwar, r/o House No.91/4, Suhara Muhalla, Mandi, District Mandi, H.P. to give her daily wages status after completion of 10 years service on part time basis and further regularize her services after completion of 8/10 years service as daily wagger *vide* demand notice dated 08-06-2017 (copy enclosed) to be fulfilled by (i) the Board of Directors, the Mandi Urban Co-operative Bank Limited, Moti Bazar, Mandi, District Mandi, H.P. (ii) the Manager, the Mandi Urban Co-operative Bank Limited, Moti Bazar, Mandi, District Mandi, H.P., is legal and justified? If yes, what amount of back wages, seniority, consequential past service benefits, compensation and regularization the above worker is entitled to from the above employers/management?”

2. The case is listed for filing of rejoinder and framing of issues for today, but, however, the petitioner, namely, Smt. Parvati Devi has made the below given statement in the Court today:—

“ब्यान किया कि मैं Reference No.15/2019 को न चलाना चाहती हूँ/ जिसे दाखिल दफ्तर किया जाये।”

3. In view of the above statement of the petitioner (Smt. Parvati Devi), this reference is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 24th day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 354/2016

Date of Institution : 27.05.2016

Date of Decision : 25.10.2019

Shri Rajinder Singh s/o Shri Bhag Singh, r/o Village Darkoly, P.O. Paunta, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

The Senior Executive Engineer, Electrical Division, H.P.S.E.B.L., Sarkaghat, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Sh. R.S. Rana, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Rajinder Singh s/o Shri Bhag Singh, r/o Village Darkoly, P.O. Paunta, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 02-02-1998 by the Executive Engineer, H.P.S.E.B.L., Division Sarkaghat, District Mandi, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 159, 207, 58, 45, 50 and 18 days during years 1993, 1994, 1995, 1996, 1997 and 1998 respectively and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. Be it recorded that earlier Shri Shri Ram Bhardwaj, learned counsel had been appearing for the petitioner. However, he as per his separate statement recorded on 26.9.2019 had stated that as despite repeated correspondence, the petitioner was not turning up, so he did not want to appear on his behalf. Summons were then sent for the service of the petitioner for 25.10.2019. He was personally served for this date. However, he did not put in appearance before this Court today, despite the case being called several times since morning. No one else had put in appearance on his behalf. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

4. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

5. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

6. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

8. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

9. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

10. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 02.2.1998 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

11. The reference is answered in the aforesaid terms.

12. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 30/2017

Date of Institution : 07.1.2017

Date of Decision : 31.10.2019

Shri Anek Kumar s/o Shri Hari Om, r/o Village Tanda Rajpur, P.O. Rajpur, Tehsil Palampur, District Kangra, H.P. . . *Petitioner.*

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Anek Kumar s/o Shri Hari Om, r/o Village Tanda Rajpur, P.O. Rajpur, Tehsil Palampur, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. during year, 2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits

and relief the above named daily wages worker is entitled to from the above employers?"

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Organic Farm department, *w.e.f.* 10th June, 2006 and he continued to work as such upto the year 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Organic Farm department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Organic Farm department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto the year 2010. The petitioner was also a member of the union and reference had been made to this court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner

had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Organic Farm department from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayata Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1- C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. His name does not figure in the seniority lists of daily paid workers of the university. It was asserted that as the petitioner had never worked as a daily paid worker during the year 2008 in the Department of Organic & Agro-forestry, the question of issuing appointment letter to him did not arise. The demands of union had not been considered by the respondents on the grounds that the services of the workers had not been engaged as daily paid labourers on muster roll basis. The tender to outsource the services of the workers was floated by the Department of Soil Science of the university and the tender of M/s Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. The Director of Research had not forced anyone to join/work under the agency. Since, the petitioner had never worked in the Department of Tea Husbandry during the year 2008, the HOD concerned had not violated any of the provisions of the Act. The Director of Research of the university had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related to research and scientific purposes. The deployment had been made for seasonal works, as per the requirement of the work. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in

lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 04.7.2018:

1. Whether the verbal termination of the services of the petitioner by the respondents during year, 2010 is/was legal and justified as alleged? . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.
4. Whether the petitioner has no cause of action to file present case as alleged? . .*OPR*.
5. Whether the petitioner has no locus standi to file the present case as alleged? . .*OPR*.
6. Whether this court has no jurisdiction to file the present case as alleged? . .*OPR*.
7. Whether the petitioner is/was daily paid worker of the respondents as alleged. If so, its effect? . .*OPR*.
8. Whether the petitioner has not approached this court with clean hands as alleged? . .*OPR*.
9. Whether the petitioner has suppressed true and material facts from the court as alleged? . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sanam Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondents examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copy of letter dated 8.7.1998 as Ex. RW1/D, copies of tentative seniority lists as on 31.3.2006 & 31.3.2008 as Ex. RW1/E & Ex. RW1/F, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/H, copy of application dated 26.7.2011 as Ex. RW1/I, copy of certificate dated 11.7.2014 as Ex. RW1/J, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/K to Ex. RW1/O, copy of Award dated 30.6.2014 as Ex. RW1/P and copy of order dated 20.3.2014 as Ex. RW1/Q.

7. Arguments of the learned Authorized Representative for the petitioner and the learned counsel for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

| | |
|-------------|--|
| Issue No. 1 | : Yes |
| Issue No. 2 | : No |
| Issue No. 3 | : Yes |
| Issue No. 4 | : Yes |
| Issue No. 5 | : Yes |
| Issue No. 6 | : Not pressed |
| Issue No. 7 | : No |
| Issue No. 8 | : Yes |
| Issue No. 9 | : Yes |
| Relief | : Petition is dismissed per operative part of the Award. |

REASONS FOR FINDINGS

Issues No.1, 2 & 7 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Anek Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager or to have worked in any department of the university. He also admitted that he had not worked in any of the sanctioned posts of the university. Further, he admitted that he had never been kept by the department on muster roll. He feigned ignorance that the seniority list of only those persons is maintained, who are kept by the department on muster roll. He was also not aware that after the year 1998 no daily wager had ever been engaged. He denied these days he is working with the contractor. He also denied that he is making a phoney statement.

11. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKVV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondents.

In the cross-examination, he denied that the petitioner was kept at work in the year 2006. Volunteered that, he had never worked with the respondents and thereafter stated that after the year 2010 the workers had been kept on outsource basis. Earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being

produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2008 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

12. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

13. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidyalaya, Palampur.

14. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

15. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

16. Ex. RW1/D is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

17. Ex. RW1/E is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

18. Ex. RW1/F is the copy of letter dated 25.5.2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

19. Ex. RW1/G is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahayata Security Services.

20. Ex. RW1/H is the copy of certificate of registration relating to M/s. Sun Security Service.

21. Ex. RW1/I is the copy of application for registration of establishments employing contract labour.

22. Ex. RW1/J is the copy of certificate of registration dated 11.7.2014 pertaining to M/s Nu Vision Commercial & Escort Services.

23. Ex. RW1/K is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

24. Ex. RW1/L is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

25. Ex. RW1/M is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

26. Ex. RW1/N is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

27. Ex. RW1/O is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

28. Ex. RW1/P is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

29. Ex. RW1/Q is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

30. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

31. In the case on hand, it was asserted by the petitioner that he was a workman of the respondents, being appointed on daily wage basis. The respondents denied this fact and claimed that had he been engaged as a daily paid labourer on muster roll basis, his name ought to have figured in the seniority list of daily paid labourers of the university circulated in the years 2006 and 2008. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. On the contrary, the respondents have placed on record the revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. RW1/E and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex. RW1/F. These documents were not disputed by the petitioner. A perusal of these documents would reveal that the name of the petitioner does not figure in them anywhere. No reason has been assigned by the petitioner as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Be it recorded here, the petitioner in his substantive evidence categorically admitted that he had not been kept on muster roll by the department. Then, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. RW1/D. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. RW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. So, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker by the respondents. In view of the admission made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondents.

32. Next, it was claimed by the petitioner that he had worked continuously with the respondents from the year 2006 upto the year 2010, without any breaks. No such record has been

the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondents, his name ought to have figured in the seniority lists maintained by the respondents. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondents and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

33. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

34. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

35. Reference was also made by the petitioner to the case titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondents, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

36. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll was prepared regarding his work, nor his name figured in the seniority lists of daily paid workers maintained by the respondents. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues No. 1 and 2 are decided against the petitioner, while issue no.7 is answered in the negative.

Issues No. 3 to 5, 8 & 9 :

37. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondents.

Issue No.6 :

38. Not pressed.

Relief :

39. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of October, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**In the Court of Shilpi Beakta, H.A.S., Sub-Divisional Magistrate, Sujanpur,
Distt. Hamirpur (H. P.)**

Rakesh Kumar aged 56 years s/o Sh. Anant Ram, r/o Village Bagehra Upperla, P.O. Bir Bagehra, Tehsil Sujanpur, District Hamirpur (H.P.) . . Applicant.

Versus

The General Public

. . Respondent.

Application for issuance of necessary direction/order to Gram Panchayat Chabutra to correct the name of applicant in the Register of Birth.

Rakesh Kumar aged 56 years s/o Sh. Anant Ram, r/o Village Bagehra Upperla, P.O. Bir Bagehra, Tehsil Sujanpur, District Hamirpur (H.P.) and his wife Smt. Neelam w/o Rakesh Kumar, r/o Village Bagehra Upperla, P.O. Bir Bagehra, Tehsil Sujanpur, District Hamirpur (H.P.) has submitted an application for correction of name & date of Birth of his wife in the record of (birth & death) register which is wrongly recorded as Neelam & date of birth 01-04-1971 in place of Neelam Kumari and date of birth 18-06-1971 and necessary order be issued to the Local Registrar (Birth and Death) Gram Panchayat Bir Bagehra, Tehsil Sujanpur, District Hamirpur for rectification in birth register record.

Therefore, the general public is hereby informed through this notice that any person who has any objections regarding this rectification in panchayat record be can file the objections personally or in writing before this court on or before 15-11-2020. The objections received after 15-11-2020 will not be entertained and rectification order will be issued to the Local Registrar (Birth and Death) Gram Panchayat Bagehra, Tehsil Sujanpur, District Hamirpur (H.P.) accordingly.

Issued today on 15-10-2020 under my hand and seal of the court.

Seal.

SHILPI BEAKTA, H.A.S.,
Sub-Divisional Magistrate,
Sujanpur, Distt. Hamirpur (H.P.).

In the Court of Vijay Kumar H.P.A.S., Sub-Divisional Magistrate-cum-Special Marriage Officer Nadaun, Distt. Hamirpur (H. P.)

1. Sahil Kumar aged 23 years s/o Shri Ravinder Kumar, r/o Village Chauk. P.O. Booni, Tehsil Nadaun, District Hamirpur (H.P.).

2. Swati aged 25 years d/o Sh. Jagdish Chand, r/o Village Housing Board Colony, House No. 2989, Ward No. 7, Tehsil & District Hamirpur (H.P.) . . Applicants.

Versus

General Public

Subject.—Proclamation for the registration of marriage under section 16 of Special Marriage Act, 1954.

Sahil Kumar aged 23 years s/o Shri Ravinder Kumar, r/o Village Chauk. P.O. Booni, Tehsil Nadaun, District Hamirpur (H.P.) and Swati aged 25 years d/o Sh. Jagdish Chand, r/o Village Housing Board Colony, House No. 2989, Ward No. 7, Tehsil & District Hamirpur (H.P.) have filed an application alongwith affidavits in the court of undersigned under Section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 23-09-2020 at Shiv Mandir, Pattan Bazar Nadaun, Tehsil Nadaun, District Hamirpur and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that if any person who has any objection regarding this marriage can file the objections personally or in writing before this court on or before 17-11-2020 at 10.00 A.M. Objections received after 17-11-2020 will not be entertained and the marriage will be registered accordingly.

Issued today on 14-10-2020 under my hand and seal of the court.

Seal.

VIJAY KUMAR, HPAS,
Sub-Divisional Magistrate,
Nadaun, District Hamirpur (H.P.).

**In the Court of Shilpi Beakta, H.A.S., Marriage Officer-cum-Sub Divisional Magistrate,
Sujaanpur, District Hamirpur, Himachal Pradesh**

1. Ajay Kumar aged 35 years s/o Milkhi Ram, r/o Village Bagehra, P.O. Bir Bagehra, Tehsil Sujaanpur, District Hamirpur (H.P.).

2. Khemdei aged 27 years w/o Late Sh. Preeto, r/o Village Dhanziayi, P.O. Nakrod Chaurah, Tehsil Chamba, District Chamba (H.P.).

Versus

General Public

Application for the registration of marriage under section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Ajay Kumar aged 35 years s/o Milkhi Ram, r/o Village Bagehra, P.O. Bir Bagehra, Tehsil Sujaanpur, District Hamirpur (H.P.) and Khemdei aged 27 years, w/o Late Sh. Preeto, r/o Village Dhanziayi, P.O. Nakrod Chaurah, Tehsil Chamba, District Chamba (H.P.) have filed an application alongwith affidavits in this court under Section 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on 14-10-2020 at Shiv Shakti Mandir Bagehra P.O. Bir Bagehra, Tehsil Sujaanpur, District Hamirpur (H.P.) as per Hindu Rites and Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objections personally or in writing before this court on or before 25-11-2020. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 21-10-2020 under my hand and seal of the court.

Seal.

Sd/-
Marriage Officer-cum-Sub Divisional Magistrate,
Sujaanpur, District Hamirpur (H.P.).

In the Court of Vijay Kumar H.P.A.S., Sub-Divisional Magistrate-cum-Special Marriage Officer, Nadaun, Distt. Hamirpur (H. P.)

1. Vijay Kumar s/o Shri Braham Dass, r/o Village Rateera, P.O. Galore, Tehsil Galore, District Hamirpur (H.P.).

2. Smt. Anuradha d/o Sh. Kuldeep Lal, r/o Village Near Papu Karyana Store, Gali No. 10, New Ashok Nagar, Near Decent School, Salem Tabri Ludhiana (Pb.)-141001 . . Applicants.

Versus

General Public

Subject.—Proclamation for the registration of marriage under section 16 of Special Marriage Act, 1954.

Vijay Kumar s/o Shri Braham Dass, r/o Village Rateera, P.O. Galore, Tehsil Galore, District Hamirpur (H.P.) and Smt. Anuradha d/o Sh. Kuldeep Lal, r/o Village Near Papu Karyana Store, Gali No. 10, New Ashok Nagar, Near Decent School, Salem Tabri Ludhiana (Pb.)-141001 have filed an application alongwith affidavits in the court of undersigned under Section 16 of Special Marriage Act, 1954 that they have solemnized their marriage on 06-07-2020 at Shiv Mandir, Pattan Bazar Nadaun, Tehsil Nadaun, District Hamirpur and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objections personally or in writing before this court on or before 23-11-2020 at 10.00 A.M. After that no objections will be entertained and the marriage will be registered accordingly.

Issued today on 23-10-2020 under my hand and seal of the court.

Seal.

VIJAY KUMAR, HPAS,
Sub-Divisional Magistrate,
Nadaun, District Hamirpur (H.P.).

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, देहरा, जिला कांगड़ा (हि0 प्र0)

मुकद्दमा संख्या : 18/एन0टी0/2020

किस्म मुकद्दमा : दुरुस्ती नाम

प्रकाश चन्द

बनाम

आम जनता

मुस्त्री मुनादी बनाम आम जनता।

उपरोक्त अदालत हजा में श्री प्रकाश चन्द पुत्र मोती राम, गांव चुरन मौजा तताहन खुर्द, तहसील देहरा, जिला कांगड़ा (हि0 प्र0) ने दुरुस्ती नाम की दरखास्त दायर कर रखी है। इसलिए समस्त आम जनता को इस मुस्त्री मुनादी द्वारा सूचित किया जाता है कि श्री प्रकाश सिंह पुत्र मोती राम, गांव चुरन मौजा तताहन

खुर्द, तहसील देहरा की बजाए प्रकाश सिंह उपनाम प्रकाश चन्द पुत्र मोती राम, गांव चुरन मौजा तताहन खुर्द, तहसील देहरा दर्ज किया जाए तो इस बारे किसी को भी आपत्ति/एतराज हो तो वह बराए पैरवी मुकद्दमा उपरोक्त अदालत हजा में दिनांक 10-11-2020 प्रातः 10.00 बजे असालतन या वकालतन हाजिर आवे, हाजिर न आने की सूरत में नियमानुसार उपरोक्त मुकद्दमा में आपके खिलाफ कार्यवाही अमल में लाई जाएगी।

आज दिनांक 25-09-2020 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी हुआ।

नोट.—पटवारी हल्का बरोटा को भेजकर लिखा जाता है कि बजरिया चौकीदार के माध्यम से मुस्त्री मुनादी मौका पर ढोल पिटवाकर कार्यवाही करवाई जाए तथा रोजनामचा रपट डाले (रोजनामचा रपट) की कापी साथ संलग्न करें।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
देहरा, जिला कांगड़ा (हि0 प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, देहरा, जिला कांगड़ा (हि0 प्र0)

मुकद्दमा संख्या : 19/एन0टी0/2020

किस्म मुकद्दमा : दुरुस्ती नाम

मनोहर लाल

बनाम

आम जनता

मुस्त्री मुनादी बनाम आम जनता।

उपरोक्त अदालत हजा में श्री मनोहर लाल पुत्र देश राज, गांव जखुई मौजा पाईसा, तहसील देहरा, जिला कांगड़ा (हि0 प्र0) ने अपने पिता के नाम की दुरुस्ती की दरखास्त दायर कर रखी है। इसलिए समस्त आम जनता को इस मुस्त्री मुनादी द्वारा सूचित किया जाता है कि श्री मानू पुत्र महली, गांव जखुई मौजा पाईसा, तहसील देहरा की बजाए मानू उपनाम देश राज पुत्र महली, गांव जखुई मौजा पाईसा, तहसील देहरा दर्ज किया जाए तो इस बारे किसी को भी आपत्ति/एतराज हो तो वह बराए पैरवी मुकद्दमा उपरोक्त अदालत हजा में दिनांक 10-11-2020 प्रातः 10.00 बजे असालतन या वकालतन हाजिर आवे, हाजिर न आने की सूरत में नियमानुसार उपरोक्त मुकद्दमा में आपके खिलाफ कार्यवाही अमल में लाई जाएगी।

आज दिनांक 25-09-2020 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी हुआ।

नोट.—पटवारी हल्का अम्ब को भेजकर लिखा जाता है कि बजरिया चौकीदार के माध्यम से मुस्त्री मुनादी मौका पर ढोल पिटवाकर कार्यवाही करवाई जाए तथा रोजनामचा रपट डाले (रोजनामचा रपट) की कापी साथ संलग्न करें।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
देहरा, जिला कांगड़ा (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, देहरा, तहसील देहरा, जिला कांगड़ा (हि0 प्र0)

ब मुकद्दमा :

श्री होशियार सिंह पुत्र मोती राम, गांव जट लाहड, डाकघर बनखण्डी, तहसील देहरा, जिला कांगड़ा, (हि0 प्र0)।

बनाम

समस्त आम जनता

दरखास्त जेर धारा 13(3) विवाह/जन्म तिथि एवं मृत्यु अधिनियम, 1966.

नोटिस बनाम आम जनता।

श्री होशियार सिंह पुत्र मोती राम, गांव जट लाहड, डाकघर बनखण्डी, तहसील देहरा, जिला कांगड़ा, (हि0 प्र0) ने इस अदालत में दरखास्त दी है कि उसके पुत्र श्री जोगिन्द सिंह पुत्र होशियार सिंह, गांव जट लाहड, डाकघर बनखण्डी, तहसील देहरा, जिला कांगड़ा, (हि0 प्र0) का नाम पंचायत रजिस्टर में गलती से दर्ज नहीं करवाया गया है अब दर्ज किया जाए। उसकी जन्म तिथि 11-04-1975 तथा उसका जन्म गांव जट लाहड में हुआ है।

अतः इस नोटिस द्वारा समस्त जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उसका नाम दर्ज करने बारे में आपत्ति या उजर हो तो वह दिनांक 25-11-2020 समय 10.00 बजे प्रातः स्वयं अथवा किसी वान्छित के माध्यम से हमारे समक्ष अदालत में हाजिर होकर पेश करें। अन्यथा एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 13-10-2020 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी, देहरा,
तहसील देहरा, जिला कांगड़ा (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, देहरा, तहसील देहरा, जिला कांगड़ा (हि0 प्र0)

ब मुकद्दमा :

श्री जीत सिंह पुत्र भगत राम, गांव मन्ढेली, डाकघर करियाडा, तहसील देहरा, जिला कांगड़ा।

बनाम

समस्त आम जनता

दरखास्त जेर धारा 13(3) विवाह/जन्म तिथि एवं मृत्यु अधिनियम, 1966.

नोटिस बनाम आम जनता।

श्री जीत सिंह पुत्र भगत राम, गांव मन्ढेली, डाकघर करियाडा, तहसील देहरा, जिला कांगड़ा (हि० प्र०) ने इस अदालत में दरखास्त दी है कि उसकी पुत्री शगुन पुत्री जीत सिंह, गांव मन्ढेली, डाकघर करियाडा, तहसील देहरा, जिला कांगड़ा (हि० प्र०) का नाम पंचायत रजिस्टर में गलती से दर्ज नहीं करवाया गया है अब दर्ज किया जाए। उसकी जन्म तिथि 05-12-2006 तथा उसका जन्म गांव मन्ढेली में हुआ है।

अतः इस नोटिस द्वारा समस्त जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उसका नाम दर्ज करने बारे में आपत्ति या उजर हो तो वह दिनांक 25-11-2020 समय 10.00 बजे प्रातः स्वयं अथवा किसी वाञ्छित के माध्यम से हमारे समक्ष अदालत में हाजिर होकर पेश करें। अन्यथा एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 13-10-2020 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी देहरा,
तहसील देहरा, जिला कांगड़ा (हि० प्र०)।

ब अदालत कार्यकारी दण्डाधिकारी, देहरा, तहसील देहरा, जिला कांगड़ा (हि० प्र०)

श्री तिलक राज पुत्र श्री रिकू राम, गांव व डाकघर करियाडा, तहसील देहरा, जिला कांगड़ा।

बनाम

समस्त आम जनता

दरखास्त जेर धारा 13(3) विवाह/जन्म तिथि एवं मृत्यु अधिनियम, 1966.

नोटिस बनाम आम जनता।

श्री तिलक राज पुत्र श्री रिकू राम, गांव व डाकघर करियाडा, तहसील देहरा, जिला कांगड़ा (हि० प्र०) ने इस अदालत में दरखास्त दी है कि उसकी पत्नी श्रीमती अन्जु देवी पत्नी तिलक राज, गांव व डाकघर करियाडा, तहसील देहरा, जिला कांगड़ा (हि० प्र०) की मृत्यु तिथि का इन्द्राज पंचायत रजिस्टर में गलती से दर्ज नहीं करवाया गया है अब दर्ज किया जाए। उसकी मृत्यु तिथि 22-03-2006 को गांव करियाडा में हुआ है।

अतः इस नोटिस द्वारा समस्त जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उसका नाम दर्ज करने बारे में आपत्ति या उजर हो तो वह दिनांक 26-11-2020 समय 10.00 बजे प्रातः स्वयं अथवा किसी वाञ्छित के माध्यम से हमारे समक्ष अदालत में हाजिर होकर पेश करें। अन्यथा एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 13-10-2020 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी, देहरा,
तहसील देहरा, जिला कांगड़ा (हि० प्र०)।

ब अदालत कार्यकारी दण्डाधिकारी, देहरा, तहसील देहरा, जिला कांगड़ा (हि0 प्र0)

श्री बलबन्त सिंह पुत्र श्री मिलखी राम, गांव व डाकघर घियोरी, तहसील देहरा, जिला कांगड़ा (हि0 प्र0)।

बनाम

समस्त आम जनता

दरखास्त जेर धारा 13(3) विवाह/जन्म तिथि एवं मृत्यु अधिनियम, 1966.

नोटिस बनाम आम जनता।

श्री बलबन्त सिंह पुत्र श्री मिलखी राम, गांव व डाकघर घियोरी, तहसील देहरा, जिला कांगड़ा (हि0 प्र0) ने इस अदालत में दरखास्त दी है कि उसकी माता श्रीमती कला देवी पत्नी मिलखी राम, गांव व डाकघर घियोरी, तहसील देहरा, जिला कांगड़ा (हि0 प्र0) की मृत्यु तिथि का इन्द्राज पंचायत रजिस्टर में गलती से दर्ज नहीं करवाया गया है अब दर्ज किया जाए। उनकी मृत्यु 01-09-2016 को गांव घियोरी में हुई है।

अतः इस नोटिस द्वारा समस्त जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उनका नाम दर्ज करने बारे में आपत्ति या उजर हो तो वह दिनांक 09-12-2020 समय 10.00 बजे प्रातः स्वयं अथवा किसी वाञ्छित के माध्यम से हमारे समक्ष अदालत में हाजिर होकर पेश करें। अन्यथा एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 12-10-2020 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी, देहरा,
तहसील देहरा, जिला कांगड़ा (हि0 प्र0)।

ब अदालत सहायक समाहर्ता प्रथम श्रेणी (तहसीलदार), नाहन, जिला सिरमौर (हि0 प्र0)

उनवान मुकद्दमा : दावा जाति सेहत इन्द्राज।

श्री फकीर चन्द पुत्र श्री ओरी लाल, निवासी मौहल्ला अमरपुर, तहसील नाहन, जिला सिरमौर, हिमाचल प्रदेश

प्रार्थी।

बनाम

आम जनता

प्रतिवादीगण।

आवेदन-पत्र बाबत जाति दुरुस्ती मौजा मौहल्ला अमरपुर, तहसील नाहन, जिला सिरमौर (हि0 प्र0)।

प्रार्थी श्री फकीर चन्द पुत्र श्री ओरी लाल, निवासी मौहल्ला अमरपुर, तहसील नाहन, जिला सिरमौर, हिमाचल प्रदेश ने इस अदालत में दरखास्त पेश की है कि वह मौजा अमरपुर, तहसील नाहन में मालिक अराजी है। जिसमें उसकी जाति दर्ज नहीं है जबकि वह कुर्मी जाति से सम्बन्ध रखता है। इसलिए उसकी जाति राजस्व रिकार्ड में कुर्मी जाति दर्ज की जावे।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को प्रार्थी की जाति दर्ज करने बारे कोई उजर/एतराज हो तो वह अपना एतराज दिनांक 09-11-2020 को प्रातः 10.00 बजे तक इस अदालत हजा में असागतन/वकालतन हाजिर आकर पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जावेगी। उसके बाद किसी का कोई भी उजर/एतराज जेर समागत न होगा।

आज दिनांक 22-11-2020 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी, तहसीलदार नाहन,
जिला सिरमौर (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी (तहसीलदार), नाहन, जिला सिरमौर (हि0 प्र0)

श्री रविन्दर सिंह पुत्र श्री धनी राम, निवासी कण्डईवाला, तहसील नाहन, जिला सिरमौर (हि0 प्र0)

बनाम

आम जनता

प्रार्थना—पत्र श्री रविन्दर सिंह पुत्र श्री धनी राम, निवासी कण्डईवाला, तहसील नाहन, जिला सिरमौर (हि0 प्र0) ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रस्तुत करके आवेदन किया है कि उसकी पुत्री दिव्या सिंह की जन्म तिथि 25-09-2002 है, जो ग्राम पंचायत बरमापापडी में दर्ज नहीं है। जिसे प्रार्थी अब दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 23-11-2020 को प्रातः 10.00 बजे अदालत में हाजिर होकर अपना एतराज प्रस्तुत कर सकता है। अगर उक्त तारीख तक किसी का उजर/एतराज प्राप्त नहीं होता तो दिव्या सिंह पुत्री श्री रविन्दर सिंह की जन्म तिथि 25-09-2002 को ग्राम पंचायत बरमा पापडी में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 22-10-2020 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी (तहसीलदार),
नाहन, जिला सिरमौर (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी (तहसीलदार), नाहन, जिला सिरमौर (हि0 प्र0)

श्रीमती सावित्री देवी पत्नी श्री मुख्तयार सिंह, निवासी गडी कटाहां, तहसील व जिला पंचकूला हरियाणा

बनाम

आम जनता

प्रार्थना—पत्र श्रीमती सावित्री देवी पत्नी श्री मुख्तयार सिंह, निवासी गडी कटाहां, तहसील व जिला पंचकूला, हरियाणा ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रस्तुत करके आवेदन किया है कि उसकी पुत्री ममता का जन्म ग्राम मकडवाली ग्राम पंचायत बनकला में दिनांक

17-01-1979 को हुआ है, जो ग्राम पंचायत बनकला में दर्ज नहीं है। जिसे प्रार्थिया अब दर्ज करवाना चाहती है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 23-11-2020 को प्रातः 10.00 बजे अदालत में हाजिर होकर अपना एतराज प्रस्तुत कर सकता है। अगर उक्त तारीख तक किसी का उजर/एतराज प्राप्त नहीं होता तो ममता पुत्री श्री मुख्तयार सिंह की जन्म तिथि 17-01-1979 को ग्राम पंचायत बनकला में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 22-10-2020 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / —
कार्यकारी दण्डाधिकारी (तहसीलदार),
नाहन, जिला सिरमौर (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी (तहसीलदार), नाहन, जिला सिरमौर (हि0 प्र0)

श्री मो0 ताहिर पुत्र श्री बशीर अहमद, निवासी कच्चा टैंक नाहन, तहसील नाहन, जिला सिरमौर (हि0प्र0)।

बनाम

आम जनता

प्रार्थना—पत्र श्री मो0 ताहिर पुत्र श्री बशीर अहमद, निवासी कच्चा टैंक नाहन, तहसील नाहन, जिला सिरमौर (हि0प्र0) ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रस्तुत करके आवेदन किया है कि उसकी अपनी जन्म तिथि 26-07-1973 जो नगरपालिका नाहन में दर्ज नहीं है। जिसे प्रार्थी अब दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 23-11-2020 को प्रातः 10.00 बजे अदालत में हाजिर होकर अपना एतराज प्रस्तुत कर सकता है। अगर उक्त तारीख तक किसी का उजर/एतराज प्राप्त नहीं होता तो श्री मो0 ताहिर पुत्र श्री बशीर अहमद की जन्म तिथि दिनांक 26-07-1973 को नगरपालिका नाहन में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 22-10-2020 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / —
कार्यकारी दण्डाधिकारी (तहसीलदार),
नाहन, जिला सिरमौर (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी (तहसीलदार), नाहन, जिला सिरमौर (हि0 प्र0)

श्री विजय कुमार पुत्र श्री दौलत सिंह, निवासी मौहल्ला मशानपुरा नाहन, तहसील नाहन, जिला सिरमौर (हि0प्र0)।

बनाम

आम जनता

प्रार्थना-पुत्र श्री विजय कुमार पुत्र श्री दौलत सिंह, निवासी मौहल्ला मशानपुरा नाहन, तहसील नाहन, जिला सिरमौर (हि0प्र0) ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रस्तुत करके आवेदन किया है कि उसके पुत्र गौरव कुमार की जन्म तिथि 03-07-1992 जो नगरपालिका नाहन में दर्ज नहीं है। जिसे प्रार्थी अब दर्ज करवाना चाहता है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 23-11-2020 को प्रातः 10.00 बजे अदालत में हाजिर होकर अपना एतराज प्रस्तुत कर सकता है। अगर उक्त तारीख तक किसी का उजर/एतराज प्राप्त नहीं होता तो श्री गौरव कुमार पुत्र विजय कुमार की जन्म तिथि दिनांक 03-07-1992 को नगरपालिका नाहन में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 22-10-2020 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी (तहसीलदार),
नाहन, जिला सिरमौर (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी (तहसीलदार), नाहन, जिला सिरमौर (हि0 प्र0)

श्रीमती सफीका बानों पत्नी श्री मेहूदीन, निवासी अमरपुर नाहन, तहसील नाहन, जिला सिरमौर (हि0 प्र0)।

बनाम

आम जनता

प्रार्थना-पुत्र श्रीमती सफीका बानों पत्नी श्री मेहूदीन, निवासी अमरपुर नाहन, तहसील नाहन, जिला सिरमौर (हि0 प्र0) ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रस्तुत करके आवेदन किया है कि उसकी पुत्री अफसाना परवीन की जन्म तिथि दिनांक 06-08-1975 है जो नगरपालिका नाहन में दर्ज नहीं है। जिसे प्रार्थिया अब दर्ज करवाना चाहती है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 23-11-2020 को प्रातः 10.00 बजे अदालत में हाजिर होकर अपना एतराज प्रस्तुत कर सकता है। अगर उक्त तारीख तक किसी का उजर/एतराज प्राप्त नहीं होता तो अफसाना परवीन पुत्री श्री मेहूदीन की जन्म तिथि दिनांक 06-08-1975 को नगरपालिका नाहन में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 22-10-2020 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी (तहसीलदार),
नाहन, जिला सिरमौर (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी (तहसीलदार), नाहन, जिला सिरमौर (हि0 प्र0)

श्रीमती किरण पत्नी श्री रमेश चन्द, निवासी अमरपुर नाहन, तहसील नाहन, जिला सिरमौर (हि0 प्र0)।

बनाम

आम जनता

प्रार्थना—पत्र श्रीमती किरण पत्नी श्री रमेश चन्द, निवासी अमरपुर नाहन, तहसील नाहन, जिला सिरमौर (हि0 प्र0) ने अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत प्रस्तुत करके आवेदन किया है कि उसकी दादी श्रीमती शकुन्तला देवी की मृत्यु दिनांक 11-01-1976 को हो चुकी है जो नगरपालिका नाहन में दर्ज नहीं है। जिसे प्रार्थिया अब दर्ज करवाना चाहती है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि इस सम्बन्ध में यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह स्वयं अथवा अपने प्रतिनिधि द्वारा मिति 23-11-2020 को प्रातः 10.00 बजे अदालत में हाजिर होकर अपना एतराज प्रस्तुत कर सकता है। अगर उक्त तारीख तक किसी का उजर/एतराज प्राप्त नहीं होता तो श्रीमती शकुन्तला देवी पत्नी जीवन सिंह की मृत्यु दिनांक 11-01-1976 को नगरपालिका नाहन में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 22-10-2020 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी (तहसीलदार),
नाहन, जिला सिरमौर (हि0 प्र0)।

ब अदालत सहायक समाहर्ता, प्रथम श्रेणी (तहसीलदार) पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

मिसल नं0 : 19/9

तारीख पेशी : 12-11-2020

मिसल तकसीम जेर धारा 123 हि0 प्र0 भू रा0 अ0 नि0, 1954 वाका मौजा टोकियों तकसीम पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश।

ब मुकद्दमा :

नेहा

बनाम

प्रेम चंद

इशतहार/नोटिस :

बनाम प्रतिवादिगण श्रीमती मधु d/o सरोजबाला, r/o माजरा

- दीपक कुमार पुत्र सरोजबाला r/o माजरा
- श्रीमती निगम d/o सरोजबाला r/o माजरा
- रीना देवी d/o नरेश कुमार पत्नी गुलशन सिंघला पुत्र सतपाल न्यू चिन्तपूर्णी कॉलोनी गोतम रोड, सोनीपत (हरियाणा)।

5. सोनिया पुत्री नरेश कुमार w/o अनिल कुमार r/o CA Atri Colony Sahabad, Markada Kurushetra, Haryana.
6. अमित पुत्र प्रमोद कुमार r/o माजरा

मुकद्दमा उपरोक्त में प्रतिवादीगण की तलबी असान तरीके से न हो पा रही है।

अतः प्रतिवादीगण उपरोक्त को किसी नोटिस/इश्तहार द्वारा सूचित किया जाता है कि वह उपरोक्त मुकद्दमे की पैरवी हेतु मिति 12-11-2020 को प्रातः 2 बजे असलामत या वकालत हाजिर अदालत होवे अन्यथा गैरहाजिरी की सूरत में कार्यवाही एकतरफा अमल में लाई जायेगी।

आज दिनांक 17-10-2020 को हमारे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता, प्रथम श्रेणी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।